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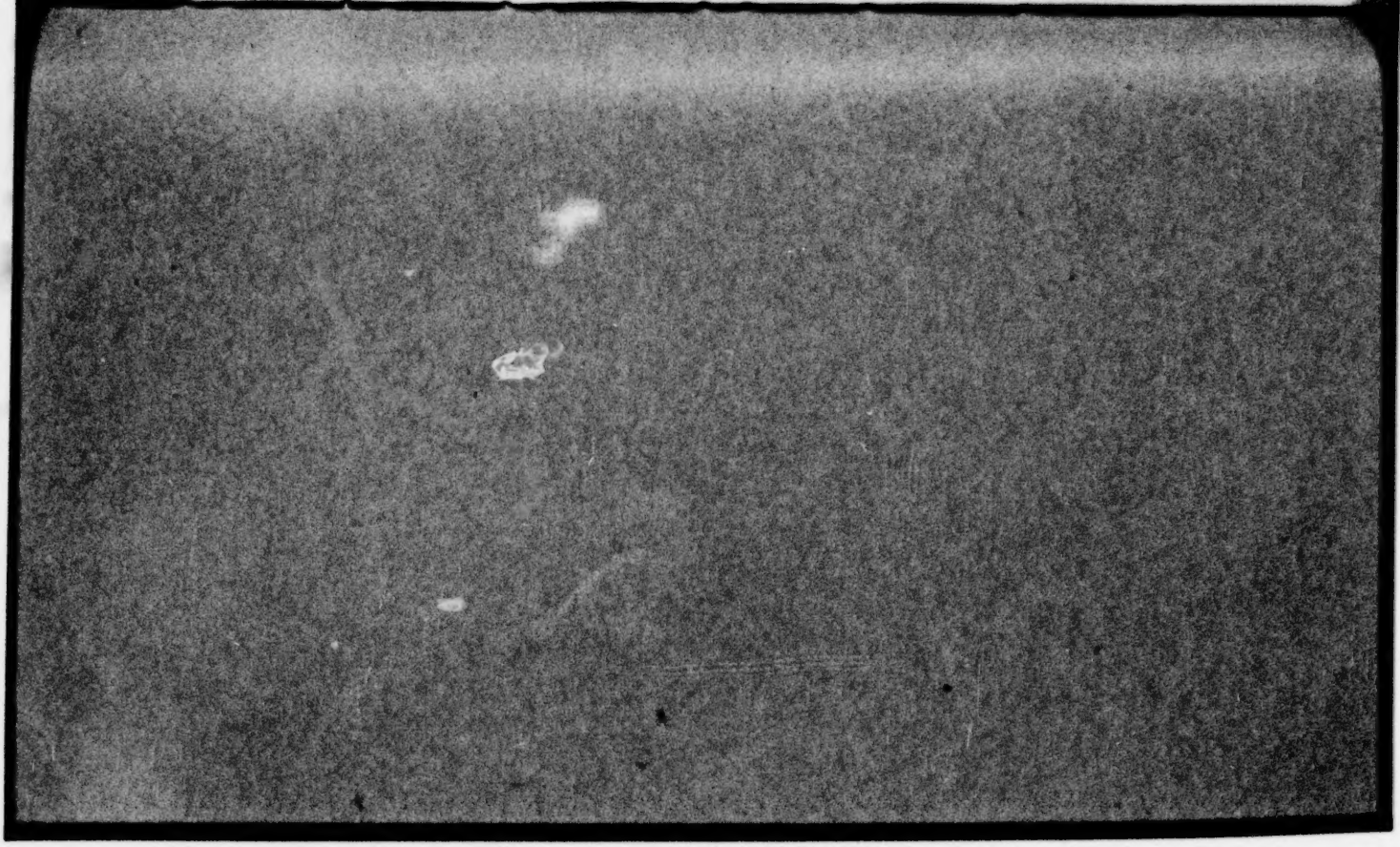

(31,562)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 252

PORTNEUF-MARSH VALLEY CANAL COMPANY, PETITIONER,

vs.

HOWARD W. BROWN AND JOHN R. CHAPIN, AS TRUSTEES

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO, EASTERN DIVISION

No. 406

HOWARD W. BROWN and JOHN R. CHAPIN, Trustees, Plaintiffs,

vs.

PORTNEUF MARSH VALLEY IRRIGATION COMPANY, LIMITED, a Corporation, and PORTNEUF-MARSH VALLEY CANAL COMPANY, LIMITED, a Corporation, Defendants

BILL OF COMPLAINT—Filed April 7, 1923

The plaintiffs complain and allege:

1

That they and each of them are now, and for many years past have been citizens and residents of the State of Massachusetts, residing in Boston in said State.

2

That the defendants Portneuf Marsh Valley Irrigation Company, Limited, and Portneuf Marsh Valley Canal Company, Limited, and each of them respectively is now and [fol. 14] has been at all times hereinafter mentioned, a corporation duly organized and existing under the laws of the State of Idaho, and each of said defendants is now, and has been since its organization, a resident and citizen of said State of Idaho.

3

That the indebtedness sought to be collected, and the lien securing the same sought to be enforced and foreclosed as herein claimed, and which is the matter in dispute herein, is of a value of $3,000 exclusive of interest and costs.

4

That on or about the 1st day of July, 1909, the defendant, Portneuf Marsh Valley Irrigation Company, Limited, executed and delivered to Colonial Trust and Savings Bank, a corporation duly organized and existing under the laws of the State of Illinois, and L. C. Rose, Trustees, (plaintiffs' predecessors in interest and in the trust hereinafter more particularly set out), a certain deed of trust or indenture of mortgage, a copy of which is hereto attached and made a part hereof, and marked exhibit "A," which plaintiffs pray may be taken and considered as part of this, their bill of complaint, as fully and to the same extent to all intents and purposes as if it were herein set forth at large.

5

That said deed of trust or indenture of mortgage was duly executed and acknowledged by defendant Portneuf Marsh [fol 14] Valley Irrigation Company, Limited, by its duly authorized officers so as to entitle the said instrument to be recorded, and thereafter, [illegible] on October 29, 1909, was filed for record in the office of the county recorder of Bannock County, Idaho, and by said recorder recorded in Book 11 of mortgages, page 528.

6

That in and by said deed of trust or indenture of mortgage (exhibit "A" aforesaid) there was granted, bargained, sold, conveyed and warranted to plaintiffs as security for the payment of the indebtedness hereinafter referred to, all of the following property, together with all rents, issues, interests, incomes and profits from the same, all the real property of which was and is situated, lying and being in the County of Bannock, in the State of Idaho, to wit:

Beginning at the Southeast corner of Lot Two (2), of Section Twenty-four (24), Township Six (6) South, Range Thirty-eight (38) East of the Boise Meridian, and running thence West along the center line of said section one thousand two hundred and nine-tenths (1,209.9) feet more or less to the East One-sixteenth (1/16) section line of said

section; thence North along said one sixteenth (1/16) section line one thousand three hundred seventeen and eight tenths (1,317.8) feet, more or less, to the North one-sixteenth (1/16) section line of said section; thence East along [fol. 16] the said North one-sixteenth (1/16) section line one hundred seventy five (175) feet; thence Southeasterly on a straight line one thousand six hundred seventy five and eight tenths (1,675.8) feet more or less to the place of beginning, containing twenty (20) acres, more or less;

Also Lot Three (3) of Section Twenty four (24), Township Six (6) South, Range Thirty eight (38) East of the Boise Meridian, containing Thirty three and two tenths (33.2) acres;

2. That certain lot, piece or parcel of land described as follows:

The West Half (1/2) of the Northeast Quarter (1/4); and the Northwest Quarter (1/4) of the Southeast Quarter (1/4) of Section Twenty four (24) and the Southwest Quarter (1/4) of the Southeast Quarter (1/4) of Section Thirteen (13) Township Six (6) South, Range Thirty eight (38) East, Boise Meridian, containing One Hundred Sixty (160) acres, according to the official plat of the survey of said lands returned to the General Land Office by the Surveyor General;

3. That certain lot, piece or parcel of land described as follows:

Beginning at the Southeast corner of Section Twenty-four (24), Township Six (6) South, Range Thirty-eight (38) East of the Boise Meridian, thence North thirty eight (38) degrees seventeen (17) minutes East one thousand six [fol. 17] hundred seventy eight and eight tenths (1,678.8) feet, more or less, to the South one-sixteenth (1/16) Section line of Section Nineteen (19), Township Six (6) South, Range Thirty nine (39) East of the Boise Meridian, thence North thirty-eight degrees seventeen (17) minutes West one thousand six hundred seventy eight and eight tenths (1,678.8) feet, more or less, to the East quarter (1/4) corner of Section Twenty four (24), Township Six (6) South, Range Thirty eight (38) East of the Boise Meridian, thence South along East line of Section Twenty-four (24) afore-

said, two thousand six hundred thirty five and five tenths (2,635.5) feet more or less, to the place of beginning, and containing Thirty one (31) acres, more or less, said land being a portion of the West Half (½) of the Southwest Quarter (¼) of Section Nineteen (19) Township Six (6), South, Range Thirty nine (39) East of the Boise Meridian:

Also all real and personal property of the Company including water rights, ditches, canals, laterals, rights of way, easements, incomes and choses in action whether now owned or hereafter acquired, and particularly the line of principal canal as projected or constructed by the Company beginning at a point on the South bank of the Portneuf River in Lot 7, Sec. 22 9 37, which point bears N. 34 degrees 40 minutes East 3,040 feet from the S. W. corner Sec. 22 9 37, Thence in a south and westerly direction a distance [fol. 18] of 910 feet across said Lot 7, thence in a westerly direction 1,440 feet across lot 8, Sec. 22 where the canal crosses the section line between Sections 21 and 22 a distance of 1,735 feet north of the S. W. corner of Section 22.

Thence in a Northwesterly direction 1,480 feet across Lot 9, 400 across Lot 8, 1,430 across Lot 7, thence in a Westerly direction 2,290 feet across Lot 5, thence in a Southwesterly direction 2,345 feet across Lot 6, all in Sec. 21, where the canal crosses the section line between Section 20 and 21 a distance of 2,610 feet north of the S. W. corner of Section 21.

Thence in a Southwesterly direction 380 feet across the N. E. ¼ of the S. E. ¼ 1,985 feet across Lot 5, 2,410 feet across Lot 6, 1,630 feet across Lot 7, 2,010 feet across the S. E. ¼ of the S. W. ¼ and 880 feet across S. W. ¼ of the S. W. ¼ all in Section 20, where the canal crosses the Section line between Section 20 and 29, a distance of 870 feet East of the S. W. corner Sec. 20;

Thence in a Southwesterly direction 1,110 feet across the N. W. ¼ of the N. W. ¼ Sec. 29, where the line crosses the Section line between Sections 29 and 30, at a distance of 315 feet South of the N. W. cor. of Section 29, Thence in a Southwesterly direction 3,000 feet across the N. ½ of the N. E. ¼, 1,120 feet across the N. E. ¼ of N. W. ¼, thence in a Southerly direction 1,750 feet across the S. E. ¼ of [fol. 19] N. W. ¼, 3,270 feet across the E. ½ of the S. W. ¼ all in Sec. 5 10 37, where the line crosses the section line

between Section 30 and 31 at a distance of 1,240 feet west of the S. E. corner of the S. W. ¼ of Section 30;

Thence 550 feet across Lot 1, 2,000 feet across the N. E. ¼ of the N. W. ¼, 1,250 feet across the S. E. ¼ of the N. W. ¼, 1,070 feet across the N. E. ½ of S. W. ¼, 4,580 across N. ½ of S. E. ¼ and 2,000 feet across the S. E. ¼ of of the S. E. ¼ all in Sec. 31 9 37, where the line crosses the Township line between section 31 9 37 and section 6 10 37, at a distance of 195 feet East of the N. E. corner Section 6 10 37.

Thence in a Southerly direction 1,000 feet across Lot 4, thence 2,810 feet across the S. W. ¼ of the N. W. ¼, 1,500 feet across the N. E. ¼ of the S. W. ¼, 500 feet across the N. W. ¼ of S. W. ¼, 1,840 feet across the S. E. ¼ of S. W. ¼ all in Sec. 5 10 37, where the line crosses the section line between sections 5 and 8, at a distance of 10 feet East of S. E. corner of S. W. ¼ Sec. 5 10 37;

Thence in a Southerly direction 3,120 feet across the W. ½ of N. E. ¼, 2,710 feet across the W. ½ of S. E. ¼, all in Sec. 8 10 37, where the canal crosses the Section line between Sec. 8 and 17, at a distance of 1,630 feet west of the N. E. corner of Sec. 17 10 37;

Thence in a Southerly direction 800 feet across the N. W. ¼ of the N. E. ¼, 430 feet across the N. E. ¼ of the [fol. 20] N. E. ¼, 1,640 feet across the S. E. ¼ of the N. E. ¼, 2,950 feet across the E. ½ of S. E. ¼ all in Sec. 71 10 37, where it crosses the section line between section 17 and 20, at a distance of 1,040 feet west of the N. E. corner Section 20 10 37;

Thence in a Southerly direction 1,240 feet across the N. E. ¼ of the N. E. ¼, 450 feet across the S. E. ¼ of the N. E. ¼, 1,520 feet across the S. W. ¼ of the N. E. ¼, and 3, 840 feet across the W. ½ of S. E. ¼, all in Sec. 20 where the canal crosses the section line between sections 20 and 29, at a distance of 535 feet East of the S. W. corner of the S. E. ¼ of Section 20 10 37;

Thence in an Easterly direction 700 feet across the N. W. ¼ of the N. E. ¼ of Section 29 where it crosses the section line 1,120 feet East of the S. W. corner of S. E. ¼ Section 20 10 37;

Thence in a Northeasterly direction 240 feet across the S. W. ¼ of the S. E. ¼, and 360 feet in a Southeasterly direction across the S. E. ¼ of the S. E. ¼ Sec. 20 10 37

where it crosses the Section line 1,080 feet west of the S. E. corner Sec. 29-10-37;

Thence in a Southerly direction 3,650 feet across the E. ½ of the N. E. ¼, 700 feet across the S. W. ¼ of N. E. ¼ 1,150 feet across the N. W. ¼ of the S. E. ¼, 2,500 feet across the N. E. ¼ of the S. E. ¼, and 1,330 fet across the S. W. ¼ of the S. E. ¼, all in Section 29-10-37, where the [fol. 21] canal crosses the Section line between Sections 29 and 30, at a distance of 1,455 feet west of the S. E. corner Section 29-10-37;

Thence in a Southerly direction 1,080 feet across the N. W. ¼ of the N. E. ¼, in a Southeasterly direction 770 feet across the N. E. ¼ of the N. E. ¼ in a Southerly direction; 1,760 — across the S. E. ¼ of the N. E. ¼ in a Southeasterly direction 3,050 feet across the E. ½ of S. E. ¼, all in Sec. 32-10-37, where it crosses the section line between sections 32 and 33, 550 feet North of the S. E. corner Section 32-10-37, Thence in a Southerly direction 780 feet across the S. W. ¼ of the S. W. ¼ Sec. 33-10-37, where the canal crosses the township line between sections 33-10-37, and Sections 4-11-37 at a distance of 60 feet east of the N. W. corner of Section 4-11-37;

Thence in a Southerly direction 1,530 feet across Lot 4, thence 1,050 feet across the S. E. ¼ of the N. E. ¼ Sec. 5, where the canal crosses the Section line between section 4 and 5 at a distance of 640 feet north of the S. W. corner of the N. W. ¼ Section 4-11-37;

Thence in an Easterly direction 2,000 feet across the S. ½ of the N. W. ¼, thence in a Southerly direction 2,950 feet across the East half of the S. W. ¼, thence in a Southwesterly direction 820 feet across the S. W. ¼ of the S. W. ¼ all in Section 4-11-37, where the canal crosses the section line between section 4 and 9 at a distance of 845 feet East of the S. W. corner of Section 4-11-37;

[fol. 22] Thence in a Southerly direction 3,160 feet across the W. ½ of the N. W. ¼, in a southeasterly direction 2,080 feet across the N. E. ¼ of the S. W. ¼, 1,310 feet across the S. W. ¼ of the S. E. ¼ and 790 feet in a southwesterly direction across the S. E. ¼ of the S. W. ¼ all in Sec. 9-11-37, where the canal crosses the Section line between Sections 9 and 16, at a distance of 630 feet west of the S. E. corner of the S. W. ¼ Section 9-11-37;

Thence in a Southeasterly direction 2,110 feet across the E. ½ of the N. W. ¼, 3,060 feet across the S. ½ of the N. E. ¼, and 4,270 feet across the E. ½ of S. E. ¼ all in Sec. 16-11-37, where the canal crosses the section line between sections 16 and 15 and 15 and 22 at a distance of 5 feet East of the S. E. corner of Section 16-11-37;

Thence in a Southeasterly direction 1,910 feet across the W. ½ of the N. W. ¼, 1,670 feet across the S. E. ¼ of the N. W. ¼, 2,220 feet across the E. ½ of the S. W. ¼, and 980 feet across the S. W. ¼ of the S. E. ¼ all in Section 22-11-37, where the canal crosses the section line between sections 22 and 27 at a distance of 675 feet east of the S. W. corner of the S. E. ¼ Section 22-11-37;

Thence in a Southerly direction 2,930 feet across the W. ½ of the N. E. ¼ and 2,760 feet across the W. ½ of the S. E. ¼ of Section 27-11-37, where the canal crosses the [fol. 23] Section line between sections 27 and 34 at a distance of 365 feet east from the S. W. corner of the S. E. ¼ Sections 27-11-37;

Also all rights, grants, interest, privileges, easements and franchises acquired by the Company under the contract of H. O. Harkness and others with the State Board of Land Commissioners of the State of Idaho, which, with the consent of said Board has been duly assigned to this Company, dated June 3, 1908, and under that certain contract, dated May 14, 1908, between the State of Idaho and the United States of America segregating the lands referred to herein, and under any other contracts which may be executed by this Company and the State Board of Land Commissioners relating to the irrigation of lands which may be segregated by the United States of America for that purpose.

Also all waters, water rights, and appropriations of water, whether presently owned by the Company or hereafter acquired by it, and all rights of way; and also all dams, reservoirs, canals, ditches, laterals, headgates and flumes; and the entire irrigation system of the Company, now owned by the Company or which it may hereafter acquire or construct and wheresoever situate in said State of Idaho, and all tools, supplies, horses, mules, wagons and all commissary stores and construction machinery of the Company wheresoever situate.

Also all notes, contracts, or other evidences of indebtedness owing to said grantor and all money now deposited in [fol. 24] escrow with the Idaho State Board of Land Commissioners or with the Treasurer of the State of Idaho, at Boise City, Idaho, whereof the Company is now the owner; and the Company does hereby agree to notify the said Idaho State Board of Land Commissioners or said State Treasurer to hold the said notes and money for the Trustees and to deliver the same when released by the said Board to the Trustee to be held under the terms of this mortgage.

Also such water contracts and notes secured by mortgage or trust deed and such bills receivable owing to the Company and money now owned or hereinafter acquired and such personal property of whatsoever nature or description now owned or hereafter acquired by the Company as shall be lodged with the Trustees under the provisions hereof.

7

That the conveyance aforesaid to plaintiffs by the said deed of trust or indenture of mortgage, was made for the purpose of securing the payment of a certain issue of coupon bonds of the said Portneuf Marsh Valley Irrigation Company, Limited, then about to be issued and negotiated by it, consisting of six hundred bonds of the face value of $[illegible] each, being of an aggregate face value of $300,000, which bonds, by the terms thereof, were to become due and be due and payable on the first day of July, 1918, at the [fol. 25] banking house of Colonial Trust and Savings Bank, in the city of Chicago, State of Illinois, and to each of which bonds there was attached interest coupons payable on the first day of January and July in each of the years between the date and the maturity of said respective bonds and at the maturity thereof, which coupons were to evidence and did evidence the semi-annual installments of interest to accrue on said bonds in accordance with the terms and provisions thereof, each coupon being in every instance for an amount equal to 3 per cent of the principal sum or face value of the bond to which it was attached.

8

That all of said bonds representing an aggregate principal sum of $300,000, were executed by the said defendant Portneuf-Marsh Valley Irrigation Company, Limited, and subsequently duly certified by Colonial Trust and Savings Bank according to the terms of said trust deed or indenture of mortgage, and thereafter all of said bonds of the said number of 600 thereof, aggregating the principal sum of $300,000 as aforesaid, due by their terms on the 1st day of July, 1918, were issued, delivered and negotiated in accordance with the terms and provisions of the said deed of trust or indenture of mortgage and the said bonds, and each of them are now outstanding and unpaid and are held by the purchasers thereof in good faith and for value; that no suit [fol. 26] or action at law has at any time been had, brought or commenced to recover the principal of said bonds, or the interest that has accrued thereon or either thereof, or any part of either.

9

That the stockholders and directors of said defendant Portneuf Marsh Valley Irrigation Company, Limited, and and legally authorized the execution and delivery of the said deed of trust or indenture of mortgage, exhibit "A," and also authorized the execution and delivery of the bonds thereby secured to be paid, and that all acts and things required by law and by the by-laws of the said defendant Portneuf Marsh Valley Irrigation Company, Limited, and necessary to make the said deed of trust and indenture of mortgage, and the bonds and coupons secured to be paid thereby valid, legal and binding instruments and obligations of said Portneuf-Marsh Valley Irrigation Company, Limited, have been done, performed, observed and complied with; that prior to the certification, issuance or delivery of said bonds, as plaintiffs are informed and believe, all and every of the requirements and conditions of the said deed of trust or indenture of mortgage with reference to the issue and certification of the bonds secured thereby, and all acts and things authorized or required by law and by the by-laws of the said defendant Portneuf-Marsh Valley Irrigation Company, Limited, and necessary to make the

[fol. 27] bonds aforesaid valid, legal, binding and negotiable obligations of the said defendant Portneuf-Marsh Valley Irrigation Company, Limited, had occurred, been performed and been complied with.

10

That in and by the said deed of trust or indenture of mortgage said defendant Portneuf-Marsh Valley Irrigation Company, Limited, among other things, covenanted and agreed as follows, to wit:

(a) To pay promptly the principal of the bonds secured thereby and each and every of the interest coupons attached thereto as they severally came due at the time and place and in the manner mentioned in such bonds and the coupons thereto belonging according to the true intent and meaning thereof.

(b) That the par or face value of the aggregate of the secured notes and water contracts which it should from time to time assign to and deposit with plaintiffs for the purpose of securing and of paying the principal and interest of the bonds to be issued under said deed of trust or indenture of mortgage should, at all times, be and be kept equal to 150% of the par or face value of the bonds then outstanding under said deed of trust or indenture of mortgage less the actual cash then in the hands of plaintiffs applicable [fol. 28] to the payment of any matured bonds or bonds properly called for redemption prior to maturity thereof.

11

That by the terms of the aforesaid deed of trust or indenture of mortgage, it was expressly stipulated and agreed that in case the grantor or mortgagor therein, being the defendant Portneuf-Marsh Valley Irrigation Company, Limited, should fail to pay said bonds or said coupons, or any of them, according to the tenor thereof on the presentation of the same respectively, and any such default should have continued for a period of ninety days or in case default should be made in the due observation or performance of any covenant or condition therein required to be kept or performed by the said Portneuf-Marsh Valley Ir-

rigation Company, Limited, and such default should continue for a period of ninety days, then the amount of the principal of said bonds, together with the accrued and unpaid interest thereon (unless default should be waived by the holders of a majority of the bonds then outstanding as in said deed of trust or indenture of mortgage provided) should, at the option and request of the holders of one-third of the then outstanding bonds, become immediately due and payable, and in such event it should be lawful for the trustees to sell and dispose of all and singular the property and interests pledged or mortgaged or intended to be [fol. 29] pledged or mortgaged under said deed of trust or indenture of mortgage, or such portion as said trustees might deem necessary, at public sale at such place as said trustees, in their sole and unreviewable discretion, might select upon such terms as to credits, partial credits, and security for the payment as they might think proper or expedient, having first given public notice of the time, place and terms of sale or sales by advertisements printed not less than once a week for at least four consecutive weeks in one or more newspapers printed and published in Chicago, State of Illinois, and that no other notice whatsoever to or upon the defendant Portneuf-Marsh Valley Irrigation Company, Limited, should be necessary.

That said deed of trust or indenture of mortgage further provided that in case of the defaults aforesaid, or any of them, and continuing as above set forth, such trustee should be further authorized and empowered either in their own names or in the name of said defendant Portneuf-Marsh Valley Irrigation Company, Limited, to execute, acknowledge and deliver to the purchaser or purchasers at such sale, good and sufficient transfers, assignments and conveyances for the property so sold, and that any sale made as aforesaid should be a perpetual bar both in law and in equity against said defendant Portneuf-Marsh Valley Irrigation Company, Limited, and all persons claiming through or [fol. 30] under it from claiming the property so sold or any interest therein, and that for the purpose aforesaid said trustees were by the terms of said deed of trust or indenture of mortgage, constituted irrevocably the attorneys of the said defendant Portneuf-Marsh Valley Irrigation Company, Limited.

That out of the proceeds arising from such sale or sales, the trustees should first defray the expenses thereof, together with their just and lawful charges for services and expenses, including a reasonable allowance for attorney and counsel fees, and that the balance of said proceeds should be paid over ratably to and among the parties holding said bonds and coupons, paying all overdue coupons first so far as might be necessary to pay the amounts due upon the same, including principal and interest computed to the time of making payment, and that if any of said proceeds then remain such remainder should be paid over to the defendant, Portneuf-Marsh Valley Irrigation Company, Limited, or its assigns.

12

That by the terms of the aforesaid deed of trust or indenture of mortgage it was expressly stipulated and agreed that in case the grantor or mortgagor therein, being the defendant Portneuf-Marsh Valley Irrigation Company, Limited, should fail to pay said bonds or said coupons, or [fol. 31] any of them, according to the tenor thereof on presentation of the same respectively, and any such default should have continued for a period of ninety days, or in case default should be made in the due observance or performance of any other covenant or condition therein required to be kept or performed by the said Portneuf-Marsh Valley Irrigation Company, Limited, and such default should continue for a period of ninety days, then said trustees might (when thereunto requested in writing by the holders of one-third of the bonds then outstanding) declare the whole of the principal and interest of said bonds to be at once due and payable, and might proceed to foreclose the lien of said deed of trust or indenture of mortgage upon all of the real estate and personal property of said defendant Portneuf-Marsh Valley Irrigation Company, Limited, including dams, headgates, ditches, canals and reservoir, in any court of competent jurisdiction in the same manner that mortgages upon real estate are foreclosed, and upon the filing of any action to foreclose said deed of trust or indenture of mortgage, a receiver should be appointed for all the property of the said defendant Portneuf-Marsh Valley Irrigation Company, Limited, to

cated in the county of Bannock, State of Idaho, or elsewhere, as a matter of right and without notice.

[fol. 32] 13

That is was further provided in said deed of trust or indenture of mortgage that before proceeding to foreclose the same whether by sale under the powers conferred therein, or otherwise, these plaintiffs, as such trustees, should have the right first to exact from the bondholders reasonable indemnity against all loss, liabilities, costs, attorney's fees and expenses that might be incurred by them in so doing, and upon the tender by the bondholders, or any of them, of such reasonable indemnity, whether previously requested or not, and upon the written request of one third in interest of all the holders of all of said bonds then unpaid and not redeemed, it should be the duty of the trustees, upon said bonds being lodged with them in case of the occurrence of any of the defaults aforesaid on the part of said defendant Portneuf Marsh Valley Irrigation Company, Limited such defaults continuing as above set forth, and not waived by the holders of a majority in amount of said bonds, to foreclose the lien of such deed of trust or indenture of mortgage in such lawful manner as said trustees might deem best; it was further provided in said deed of trust or indenture of mortgage that no delay or omission by the trustees in exercising the rights and powers therein granted should be held to exhaust such rights and powers or be constructed as a waiver thereof.

[fol. 33] 14

That said deed of trust or indenture of mortgage further provided, declared and agreed that as a condition upon which each successive holder of all or any of said bonds, and of all or any of the coupons for the interest of said bonds received and held the same, that no holder or holders of any of said bonds or coupons should have the right to institute any proceedings in equity or for the execution of the trusts therein provided or for the appointment of a receiver, or for any other remedy thereunder, or for the enforcement of the lien thereby created without first giving due notice in writing to said trustees of default having

been made and continuing as aforesaid, and unless the holders of one-third of the then outstanding bonds had, in writing notified and requested said trustees as above provided and until a reasonable opportunity had been afforded such trustees, after the receipt of such notice and request to proceed and exercise the powers in said deed of trust or indenture of mortgage granted, or to institute such action, suit or proceeding in their own names and without also having offered to such trustees adequate security and indemnity against the costs, expenses and liabilities to be by such trustees incurred therein or thereby; and it was also provided and agreed by the terms of said deed of trust or indenture of mortgage that no holder or holders of any of the said bonds or any of the said interest coupons intended [fol. 34] to be secured by said deed of trust or indenture of mortgage should institute any suit, action or proceeding at law or in equity for the foreclosure thereof or for the appointment of a receiver or for the collection of any of the moneys evidenced by such bonds or coupons, otherwise than upon the terms and conditions and in the manner in said trust deed provided and as above alleged.

15

That subsequent to the execution of the aforesaid deed of trust or indenture of mortgage, there was deposited with and pledged and assigned to the said trustees, certain contracts entered into by the said Portneuf-Marsh Valley Irrigation Company, Limited, for the sale of water rights and shares in its irrigation system, which said water right contracts, to the extent of the several amounts owing and unpaid thereon, constituted lien upon the lands in each severally described situated in the County of Bannock, State of Idaho; that the said trustees from time to time made collections of installments of principal and interest falling due on certain of said contracts until the same were fully paid, and thereupon in the manner provided in said deed of trust or indenture of mortgage said trustees released from the several liens imposed by such respective water contracts the lands and water rights covered thereby; [fol. 35] that the remaining contracts now in the hands of plaintiffs as such trustees are enumerated in a list hereto

attached, marked exhibit "B" and made a part hereof, said list specifying in appropriate columns the respective numbers of said contracts, the names of the parties purchasing water rights under such contracts and the number of shares or interests in said irrigation works purchased under such contracts.

16

That upon certain of said water contracts deposited as aforesaid with the trustees under said deed of trust or indenture of mortgage, it was necessary upon default being made in the payments of principal and interest falling due under said several contracts, for said trustees to begin proceedings for the enforcement and foreclosure of the respective liens imposed thereby, and that by reason of such proceedings and in the enforcement and foreclosure of the respective liens imposed by said water contracts, plaintiffs, as trustees under said deed of trust or indenture of mortgage, now own and hold in pledge and in the place and stead of such water contracts originally deposited with said trustees the following real property situated in Bannock County, Idaho, together with the respective shares of stock purchased under the aforesaid water contracts and evidencing a water right for the respective parcels of land [fol. 36] intended to be irrigated thereby; that the following list of such lands shows the number of the water contract in the enforcement of which said lands were acquired, the name of the purchaser under such water contract, the number of shares of water stock appurtenant to the same as a water right, and the description of said several tracts of land:

[fol. 37]

Contract No.	Name	Number of shares	Description of land
16	A. F. Sorstedt	80	W. ½ N. W. ¼ Sec 33 Tp. 11 S., R. 37 E. B. M.
17	F. D. Cathcart	80	S. ½ S. E. ¼ Sec 29, Tp. 11 S., R. 37 E. B. M.
21	Mary Ethel Gregory	80	W. ½ S. W. ¼ Sec. 33, Tp. 11 S., R. 37 E. B. M.
22	D. W. Evans	80	E. ½ N. E. ¼ Sec. 32, Tp. 11 S., R. 37 E. B. M.
23	Rob't. L. Hardwick	40	S. E. ¼ S. W. ¼ Sec. 7, Tp. 11 S., R. 37 E. B. M.
X-31	Rob't. S. Nelson, Jr.	80	E. ½ S. W. ¼ Sec. 29, Tp. 11 S., R. 37 E. B. M.
33	C. E. Layton	80	S. ½ N. W. ¼ Sec. 29, Tp. 11 S., R. 37 E. B. M.
37 & 39	J. E. Cathcart	160	W. ½ N. E. ¼; E. ½ N. W. ¼ Sec. 32, Tp. 11 S., R. 37 E. B. M.
X-54) 120)	A. F. Daughenbaugh	160	S. E. ¼ S. E. ¼ Sec. 18; S. W. ¼ S. W. ¼; S. W. ¼ N. W. ¼; N. W. ¼ S. W. ¼ Sec. 17, Tp. 11 S., R. 37 E. B. M.
77) 89) 95)	John F. Widman	158 73	Lot 1, Sec. 3; Lot 4; S. W. ¼ N. W. ¼; S. E. ¼ N. W. ¼ Sec. 4, Tp. 12 S., R. 37 E. B. M.
83	Oliver Chambers	80	E. ½ N. W. ¼ Sec. 30, Tp. 11 S., R. 37 E. B. M.
84	Everard Chambers	80	S. W. ¼ N. E. ¼; N. W. ¼ S. E. ¼ Sec. 30, Tp. 11 S., R. 37 E. B. M.
97	F. D. Staves	80	S. ½ N. E. ¼ Sec. 19, Tp. 11 S., R. 37 E. B. M.

[fol. 38]

108	H. A. Weddle	39 57	Lot 3 Sec. 4, Tp. 12 S., R. 37 E. B. M.
128	Lottie L. Cobb	79 43	S. W. ¼ S. E. ¼ Sec. 32, Tp. 11 S., R. 37 E. B. M. Lot 2, Sec. 5, Tp. 12 S., R. 37 E. B. M.

	129	L. A. Trowbridge	80	N. W. ¼ S. E. ¼; N. W. ¼ S. W. ¼ Sec 32, Tp. 11 S., R. 37 E. B. M.
	130	Olivia J. Hanchett	80	
23	135	G. E. Crump	40	N. E. ¼ N. W. ¼ Sec. 19; S. E. ¼ S. W. ¼ Sec. 18, Tp. 11 S., R. 37 E. B. M.
23				S. W. ¼ S. W. ¼ Sec. 5, Tp. 11 S., R. 37 E. B. M.
	152	W. B. Astin	40	N. E. ¼ N. W. ¼ Sec. 31, Tp. 11 S., R. 37 E. B. M.
	155	Elizabeth Burhoe	80	N. E. ¼ S. W. ¼; S. E. ¼ N. W. ¼ Sec. 18, Tp. 11 S. R. 37 E. B. M.
	A-12	Fred Mouhler	10	Lot 13 of acreage tracts in Sec. 34, Tp. 11 S., R. 37 E. B. M.
	A-46	Mary E. Linton	5 44	Lot 17, of acreage tracts in Sec. 34, Tp. 11 S., R. 37 E. B. M.

[fol. 39] 17

That on or about the 1st day of July, 1915, the said Colonial Trust and Savings Bank and L. C. Rose, original trustees under said deed of trust or indenture of mortgage, resigned their respective offices as trustees which resignation was duly accepted by defendant Portneuf-Marsh Valley Irrigation Company, Limited, and upon the request of the majority in interest of the holders of the outstanding bonds secured by said deed of trust or indenture of mortgage, and with the consent of said defendant Portneuf Marsh Valley Irrigation Company, Limited, the District Court of the Fifth Judicial District of the State of Idaho, in and for Bannock County, did, by an order made and entered on the 23d day of July, 1915, appoint (all in the manner expressly provided for in said deed of trust in case of a vacancy occurring in the office of trustee), Chicago Title & Trust Company, a corporation of Chicago, Illinois, and William C. Niblack as the successors in trust of said Colonial Trust and Savings Bank and L. C. Rose who had resigned as aforesaid; that on or about the 14th day of August, 1917, said Chicago Title & Trust Company and William C. Niblack likewise resigned their offices as trustees under said deed of trust or indenture of mortgage, and on August 17, 1917, by an order made and entered by the Judge of the District Court of the Fifth Judicial District of the State [fol. 40] of Idaho, in and for Bannock County, all according to the method in said deed of trust provided, these plaintiffs were appointed successors in said trust of said Chicago Title & Trust Company and William C. Niblack, and plaintiffs ever since have been and now are the duly appointed, qualified and acting trustees under said deed of trust or indenture of mortgage, and wherever in this complaint the trustees under said instrument are referred to, it is intended to mean by said term "trustees" the trustees in office at the particular time mentioned.

18

That said defendant, Portneuf Marsh Valley Irrigation Company, Limited, has made default on said deed of trust or indenture of mortgage and upon said bonds in the following among other particulars:

(a) In that it has failed and neglected, and still fails and neglects to keep the par or face value of the aggregate of the secured notes and water contracts which it should, as provided in said deed of trust, from time to time assign to and deposit with plaintiffs for the purpose of securing and paying the principal and interest of the bonds issued under said deed of trust or indenture of mortgage equal to 150% of the par or face value of the bonds outstanding under said deed of trust or indenture of mortgage less the actual cash in the hands of plaintiffs applicable to the pay-
[fol. 41] ment of any matured bond or bonds properly called for redemption prior to maturity thereof, and that the aggregate amount of the face value of such contracts now on deposit is less than 150% of the aggregate face value of the bonds outstanding and furthermore that a considerable number of said contracts so on deposit with plaintiffs as trustees under the terms of said deed of trust or indenture of mortgage are now in default and payments are overdue thereon.

(b) That it has failed, neglected and refused, and still fails, neglects and refuses to pay the interest coupons attached to each, every and all of the six hundred bonds aforesaid, or any part thereof, which coupons matured and came due on January 1, 1915, and on each and every semi-annual interest coupon due date thereafter; that the principal of said bonds fell due on the 1st day of July, 1918, and said defendant has failed, neglected and refused, and still fails, neglects and refuses to pay the principal of said bonds or any of them, or the interest on said bonds or any part thereof accruing after the maturity of said bonds, and each and every of said coupons falling due January 1st, 1915, and thereafter as well as the entire principal of said bonds and the interest on said bonds from and after the maturity thereof, to wit, July 1, 1918, is now due and owing and wholly unpaid.

[fol. 42] That no waiver of any of the aforementioned defaults of the said defendant Portneuf Marsh Valley Irrigation Company, Limited, has ever been made or given, either by these plaintiffs, or by the holders of a majority of the bonds outstanding at any time or in any manner or at all.

19

That for the purpose of this proceeding, plaintiffs have found it necessary to employ counsel to conduct the same, and plaintiffs have themselves performed valuable services in connection with their said trust under the terms of said deed of trust or indenture of mortgage, and have expended large sums of money in that behalf, and under and by virtue of the terms of said deed of trust or indenture of mortgage, plaintiffs are entitled to a fair and reasonable compensation for their services, and they are also entitled to a fair and reasonable compensation for their counsel employed by them as aforesaid; that said deed of trust or indenture of mortgage provides that out of the proceeds arising from any sales under the foreclosure thereof, the trustees should first defray the expenses thereof, together with their just and lawful charges for services and expenses, including a reasonable allowance for attorney and counsel fees; that the reasonable value of plaintiffs' services as such trustees is the sum of Ten Thousand Dollars; [fol. 43] that a reasonable allowance for counsel fees herein is the sum of Ten Thousand Dollars.

19A

That there is now due and owing on account of the 600 bonds secured by the said deed of trust or indenture of mortgage the following amount:

Principal of bonds	$300,000 00
Interest coupons due Jan. 1, 1915	9,000 00
Interest coupons due July 1, 1915	9,000 00
Interest coupons due Jan. 1st, 1916	9,000 00
Interest coupons due July 1, 1916	9,000 00
Interest coupons due Jan. 1st, 1917	9,000 00
Interest coupons due July 1st, 1917	9,000 00
Interest coupons due Jan. 1st, 1918	9,000 00
Interest coupons due July 1st, 1918	9,000 00

Interest at 6% per annum upon the aggregate principal sum of the bonds outstanding, to wit, on $300,000 00 from July 1, 1918, to date of the decree herein, and that there is due under said deed of trust or indenture of mortgage

compensation for the services of plaintiff as trustees and compensation for the services of their counsel.

That plaintiffs are also entitled, under the terms of said deed of trust or indenture of mortgage, to the payment of all costs and expenses of every kind of this proceeding, and of all expenses, liabilities, and advances made or incurred by them in keeping, maintaining or operating the property herein before referred to, and in discharging their trust.

[fol. 44] 20

That the business of said defendants, and the use which is made by them of the property conveyed by said deed of trust or indenture of mortgage, consists chiefly in the operation of a certain irrigation system situated in the county of Bannock, State of Idaho, and the supplying of water for irrigation and other purposes to numerous persons, residents of said County, and that because of the peculiar nature and character of the said property and the manner in which the operation thereof has been and is now being conducted, said property can be sold to better advantage and should be sold in one parcel and as an entirety or whole, and as a going system, and further, that the sale thereof should be made without redemption for the reason, as plaintiffs are advised and believe, that the redemption laws of the State of Idaho do not cover or apply to or affect property of the kind and character covered by said deed of trust or indenture of mortgage; that said irrigation system is charged with a public use.

21

That the property conveyed by, and upon which said deed of trust or indenture of mortgage constitutes a lien, affords scant, meager and inadequate security for the amount due upon the indebtedness secured by said deed of trust or indenture of mortgage; that the covenants and [fol. 45] conditions of said deed of trust or indenture of mortgage have not been performed, but have been broken and that the property is probably insufficient to discharge the mortgage debt, and if the operation of the business of the defendants should be suspended during the pendency

of this suit, it would greatly injure the value of said property both for the purpose of sale and otherwise, and cause irreparable injury to plaintiffs and to the owners of the indebtedness aforesaid secured by said deed of trust or indenture of mortgage; and that the property, plant and irrigation system should be preserved and operated by a receiver appointed herein under the supervision and direction of this Court for protecting the same and preserving its value.

22

That as plaintiffs are informed and believe, and therefore allege, the defendant, Portneuf Marsh Valley Canal Company, Limited, a corporation, has or claims to have some interest in or lien upon the property hereinbefore described or in some part or parts thereof, the exact nature of which is unknown to these plaintiffs, but which interest or interests, lien or liens, if any there are, plaintiffs allege are each subject and subordinate to the lien of the aforesaid deed of trust or indenture of mortgage and of the indebtedness secured to be paid thereby; that plaintiffs are informed and believe and therefore allege that said Port [fol. 46] neuf-Marsh Valley Canal Company, Limited, has from time to time heretofore levied certain pretended assessments upon its capital stock, which shares of stock belong to owners of land susceptible of irrigation from said irrigation works, and evidence the ownership of proportionate shares or interests in said irrigation works, and thereby a water right for the irrigation of the lands under said system; that among the shares of stock which said pretended assessments were sought to be levied are the shares of stock held by these plaintiffs as collateral security in connection with the water contracts purchasing the same and as shown in the list set forth in exhibit "B" attached hereto; that also among the shares of stock upon which said pretended assessments were sought to be levied are the shares of stock appurtenant as a water right to the lands set forth in paragraph 16 hereof acquired by these plaintiffs as hereinbefore set out in the enforcement of the water contract liens therein specified, and plaintiffs are informed and believe and therefore allege that said defendant, Portneuf-Marsh Valley Canal Company, Limited,

claims that by reason of said pretended liens and certain proceedings for the enforcement thereof that it has a claim or lien upon said shares of stock or some of them prior and paramount to plaintiff's claim and lien thereon under the terms of said deed of trust or indenture of mortgage, [fol. 47] but plaintiffs allege that any such claim or lien, if any there be, of said defendant Portneuf Marsh Valley Canal Company, Limited, upon any of the property herein described, and especially upon said shares of stock or any of them is subject and subordinate to the lien of the aforesaid deed of trust or indenture of mortgage and to the indebtedness secured to be paid thereby.

Wherefore plaintiffs pray that a subpœna issue to the defendants Portneuf-Marsh Valley Irrigation Company, Limited, a corporation, and Portneuf Marsh Valley Canal Company, Limited, a corporation, and each of them requiring said defendants, and each of them to answer this bill of complaint according to the rules and practice of this Honorable Court; that during the pendency of this proceeding a receiver may be appointed for all the property, real, personal, mixed and choses in action conveyed by, and upon which the said deed of trust or indenture of mortgage constitutes a lien, with full power and authority in said receiver to take possession and immediate control of all of said property and operate the same; that an account may be taken in this behalf by or under the direction of this Court of the whole of the indebtedness, principal and interest, due and owing upon the aforesaid bonds and the said deed of trust or indenture of mortgage, including all costs and expenses of every kind or character of this proceeding and the sale held thereunder and a reasonable com- [fol. 48] pensation to plaintiffs, their agents, attorneys, solicitors and counsel for services in connection therewith and all other prior charges for costs, charges, and disbursements made or incurred in managing and operating the property aforesaid, and also the payment of any sums heretofore or hereafter advanced by plaintiffs for taxes and assessments; that the defendant Portneuf Marsh Valley Irrigation Company, Limited, may be decreed to pay whatever sum or sums shall appear to be due upon the taking of the account aforesaid by a short day to be fixed

by the court; that in default of such payment to be made by said Portneuf Marsh Valley Irrigation Company, Limited, said mortgaged property and premises may be sold in one parcel and as an entirety or whole and as a going system and without redemption to satisfy the amount so found to be due; that included in said sale may be the property held in pledge by plaintiffs as specified in paragraph 6 hereof, together and in connection with the shares of corporate stock of defendant Portneuf Marsh Valley Canal Company, Limited, representing the respective water rights for said lands and appurtenant thereto; that in case of such sale the said defendant and all persons claiming by, through or under it, may be forever barred and foreclosed of and from all equity of redemption and all claims of, in and to said mortgaged premises and property and every part thereof, and the purchaser thereof be let into immediate possession of the premises and property so sold; that out [fol. 49] of the proceeds of such sale any moneys that may thereafter come into the hands of the receiver appointed by this court, or into the hands of plaintiffs, there may be first paid all costs and expenses of every kind and character of such proceedings and sale and a reasonable compensation to plaintiffs, their agents and attorneys, solicitors and counsel, for services in connection therewith and herewith, and all the proper charges of plaintiffs for their services, costs, charges and disbursements made or incurred in managing and operating the property aforesaid, and that then there may be repaid all sums of money heretofore or hereafter advanced by plaintiffs or by any holder or holders of said bonds, or any of them, for taxes or assessments and interest thereon, and that there may then be paid the amount due upon said bonds secured by said deed of trust or indenture of mortgage both a principal and interest, and if there be a surplus, that the same may be held subject to the further order or orders of this court, and that upon any sale under the order or decree of this court, the purchaser or purchasers may, after providing for all expenses, costs and compensation as aforesaid, be allowed to make settlement for and payment of the balance of the price bid for such property at such sale and to deliver to the Master or other person conducting the said sale the bonds and c[illegible]s secured by said deed of trust or indenture of

mortgage, and have the same applied toward the payment [fol. 50] of the balance of the purchase price, computing such bonds at a sum equal to but not exceeding that which should be payable out of the net proceeds of such sale if made for cash to the holders of said bonds for the principal and interest thereof, and that in case the proceeds of such sale shall not be sufficient to satisfy and discharge all the matters aforesaid, a judgment and decree may be entered against the defendant Portneuf-Marsh Valley Irrigation Company, Limited, for any deficiency that may be due or owing from it after the application of the proceeds of sale as herein prayed.

That the defendant Portneuf Marsh Valley Canal Company, Limited, a corporation, may be required to answer and set forth the nature of its claim, interest in or lien upon the property herein described, if any there be, or be forever barred, and that all adverse claims of the said defendant may be determined by decree of this Court, and that by said decree it may be declared and adjudged that the said last mentioned defendant, Portneuf Marsh Valley Canal Company, Limited, has no estate, interest, claim, or lien whatever in or to said property or any part thereof, and that it be forever barred and enjoined from asserting any interest or claim whatsoever in or to said property or any part thereof.

[fol. 51] That plaintiff may have such other and further relief in the premises as the nature of the case may require, and as shall be proper and agreeable to the principles of equity and to this Honorable Court, including costs herein.

Edwin Snow, Residing at Boise, Idaho, Attorney for Plaintiffs.

(Duly verified.)

Exhibit "A" to Bill of Complaint

This indenture, made and entered into this first day of July, in the year 1909, by and between Portneuf Marsh Valley Irrigation Company, Limited, a corporation duly organized and existing under the laws of the State of Idaho, hereinafter called the Company, party of the first part, and Colonial Trust and Savings Bank, a corporation duly

organized and existing under the laws of the State of Illinois, and L. C. Rose, Trustees, hereinafter called the Trustees, party of the second part,

Witnesseth:

That, whereas, the Company has full power under and by virtue of the laws of the State of Idaho to borrow money and issue its bonds to evidence the same, and to pledge by mortgage or trust deed its property to secure the payment thereof; and

Whereas, the stockholders of the Company, at a meeting duly called and held at the office of said Company on the seventh day of August, 1908, by the unanimous vote of all of the stockholders adopted the following resolution:

[fol. 32] "Resolved by the stockholders of the Portneuf Marsh Valley Irrigation Company, Limited, in stockholders' meeting duly assembled that for the purpose of constructing, extending, completing and equipping the irrigation system of the Company in Bannock County, State of Idaho, and for the general uses of the Company in the further development of its business, the Board of Directors are hereby authorized to borrow money and to issue the corporate bonds of the Company, bearing interest at six per cent. per annum, payable in gold coin, to the amount of three hundred thousand dollars. And to secure the due payment of such bonds, the Board of Directors are further authorized to execute and deliver a mortgage or deed of trust conveying all or any portion of the present and future acquired rights, properties and franchises of this Company to a trustee. The form and provisions of such bonds and such mortgage or deed of trust may be determined by the Board of Directors, or the officers of the Company executing the same; provided, however, that no bonds shall be issued, unless there shall be deposited with and remain in the possession of such trustee as additional security therefor, under the mortgage or deed of trust securing the same, an amount of water right contracts, or mortgages, equal in par value to one and one half times the par value of the bonds issued."

And, whereas, at a meeting of the Board of Directors of the Company, duly called and held at the office of said Company on the twenty first day of June, 1909, a quorum being

[fol. 53] present, the following resolutions were unanimously adopted, namely:

"Resolved by the Board of Directors of the Portneuf-Marsh Valley Irrigation Company, Limited:

First. That the resolution passed and adopted by the stockholders of this Company at their meeting held the seventh day of August, 1908, relating to the issue of bonds of the company to the amount of $300,000, be duly performed, effectuated and fulfilled, and the same is hereby approved, ratified and adopted.

Second. That the President and Secretary of this company be, and they are hereby authorized and directed in its behalf and under its corporate seal, to execute and deliver to Colonial Trust and Savings Bank of Chicago, Illinois, and L. C. Rose, both of Chicago, Illinois, as trustees, a mortgage or deed of trust to bear the date of July 1, 1909, and to be known as "Mortgage or Deed of Trust" of such tenor and form as the President and Secretary may deem proper (and their execution of any such deed of trust shall be conclusive evidence of their approval of the same), upon all or any part or portion of the corporate property, whether real, personal or mixed, which the company now owns or may hereafter acquire, and which mortgage or trust deed shall secure an issue of bonds to be dated July first, 1909, and to be known and designated as "Portneuf-Marsh Valley Irrigation Company, Limited, First Mortgage Bonds," not exceeding in the aggregate the principal sum of $300,000, and payable in gold coin of the United [fol. 54] States, of, or equal to the present standard of weight and fineness, at Colonial Trust and Savings Bank, in the City of Chicago, Illinois.

Third. The said bonds shall bear interest at the rate of six per centum (6%) per annum, until said principal sum shall have been paid, such interest to be paid semi-annually on the first day of January and the first day of July in each year; both principal and interest of said bonds shall be made payable without deduction for any tax or taxes, or stamp duties, which the company may be required to pay, or to retain therefrom, under or by reason of any present or future law of the United States or of any state, territory,

county or municipality thereof, the company hereby agreeing to pay all such tax or taxes, and stamp duties; such bonds shall be of the denomination of $500.00 each, shall be numbered from one (1) to six hundred (600) inclusive, and shall be due and payable July 1, 1918, or on July 1 in any year before said date in and after the year 1913 at the option of the said Company.

Fourth. That the President and Secretary of this Company shall execute in the name and in behalf of this company and under its corporate seal, such bonds to be secured by the said mortgage or deed of trust in the aggregate amount of $300,000. The coupons to be attached to said bonds shall be authenticated by the engraved facsimile signature of the treasurer of this company, and such coupons shall, in addition to bearing the number of the bond to which they are attached be numbered from one (1) up [fol. 55] consecutively, and all odd numbered coupons shall become due and payable January 1st, and all even numbered coupons shall become due and payable on July 1st in each and every year until the maturity of the bonds to which the same are attached.

Fifth. That all of said bonds after being executed by the officers of the company shall be delivered to Colonial Trust and Savings Bank, one of said trustees, which shall at once certify and issue to the treasurer of the company, or to such person as he may in writing designate, any or all of said bonds.

Sixth. That said bonds and coupons thereto attached shall be in substantially the following form, to wit:

United States of America,

State of Idaho

No. —.

The Portneuf-Marsh Valley Irrigation Company, Limited, First Mortgage Six per Cent. (6%) Gold Bond

Know all men by these presents, that Portneuf-Marsh Valley Irrigation Company Limited, a corporation organized and existing under the laws of the State of Idaho, acknowledges itself to owe and for value received hereby

promises to pay to the bearer of this bond (or in case this bond is registered to the registered holder thereof), five hundred ($500.00) dollars in gold coin of the United States of America of the present standard of weight and fineness on the first day of July, A. D. 1918, at the banking house [fol. 56] of Colonial Trust and Savings Bank of Chicago, and to pay interest thereon at the rate of six per cent. (6%) per annum, payable semi annually in like gold coin on the first day of January and the first day of July in each year until the principal sum shall be fully paid upon the presentation and surrender of the respective coupons hereto annexed at the said banking house of Colonial Trust and Savings Bank of Chicago as they severally become due.

Both principal and interest of this bond are payable without deduction for any United States, State, County, Municipal or other tax or taxes or stamp duties which the Portneuf-Marsh Valley Irrigation Company, Limited, may be required to pay, deduct or retain therefrom under or by reason of any present or future law, and the Portneuf-Marsh Valley Irrigation Company, Limited, hereby agrees to pay such tax or taxes and stamp duties.

This bond is redeemable at the option of the Company on July 1, 1913, or on the first day of any July thereafter in the manner and upon the conditions prescribed in said mortgage or deed of trust.

This bond in conformity with the requirements of the mortgage or deed of trust hereinafter referred to is secured by deposits with the trustees under the said mortgage or deed of trust of water contracts, notes or mortgages which are a lien upon the land irrigated by the Portneuf-Marsh Valley Irrigation Company, Limited, the par or face value of such contracts, notes or mortgages, so deposited as afore- [fol. 57] said, being one and one half (1½) times the par or face value of this bond.

This bond is one of an issue of bonds of said Portneuf-Marsh Valley Irrigation Company, Limited, of like date, tenor and effect, rate of interest, maturity and denomination, numbered consecutively from one (1) to six hundred (600) issued and to be issued to an amount not exceeding in the aggregate the principal sum of $300,000, under the provisions of and equally secured by a mortgage or deed

of trust of even date herewith, made to Colonial Trust and Savings Bank of Chicago, a corporation duly organized and existing under the laws of the State of Illinois, and L. C. Rose of Chicago, Illinois, joint trustees, covering all the property, rights and franchises of the Portneuf-Marsh Valley Irrigation Company, Limited, set forth in said mortgage or deed of trust, to which reference is made for a description of the property, rights and franchises mortgaged, and the nature and extent of the security, the rights of the holders of bonds under the same and the terms and conditions under which said bonds are issued and secured.

If default shall be made in the payment of the interest of this bond or in the performance of certain covenants and agreements in said mortgage or deed of trust, then the principal of this bond may become due and payable on the conditions and in the manner and at the time provided in said mortgage or deed of trust.

This bond may be registered as to the payment of the principal upon the books of Colonial Trust and Savings [fol. 58] Bank, one of said Trustees, at its office in the City of Chicago, in the manner provided in such mortgage or deed of trust; but such registration shall not affect the negotiability of the coupons by delivery. After such registration no transfer of this bond except made on such books shall be valid unless the last transfer shall have been made to bearer. This bond shall continue subject to the successive registration and transfer to bearer as aforesaid, at the option of the owner.

No recourse shall be had for the payment of the principal or interest of this bond to any stockholder, director or officer of the Company, whether by any statute or by the enforcement of any assessment or otherwise howsoever.

This bond shall not be valid or obligatory for any purpose until it shall have been authenticated by the signature of Colonial Trust and Savings Bank of Chicago, one of the trustees, to the certificate endorsed hereon.

In witness whereof, the Portneuf Marsh Valley Irrigation Company, Limited, has caused this bond to be signed by its president and its corporate seal to be hereto affixed attested by its secretary, and the interest coupons hereto

attached to be executed with the engraved signature of its treasurer, as of the first day of July, A. D. 1909.

Portneuf Marsh Valley Irrigation Company, Limited, by ——————, President.

Attest: ——————, Secretary.

[fol. 59] (Form of Coupon)

No. —. $15.00.

The Portneuf Marsh Valley Irrigation Company, Limited, will pay to the bearer on the first day of January (July) 190, at the banking house of Colonial Trust and Savings Bank of Chicago, fifteen ($15.00) dollars in gold coin of the United States of America of the present standard of weight and fineness, without deduction for taxes or stamp duties, being six months' interest due on that date on its first mortgage six per cent. gold bond, dated July 1, 1909, No. —

——————, Treasurer.

(Form of Trustee's Certificate)

The within bond is one of the bonds issued under and described in the within mentioned mortgage or deed of trust.

Colonial Trust and Savings Bank, Trustee, by ——————, Secretary."

And, whereas, the President and Secretary of the Company have this day, in accordance with the resolutions passed as aforesaid by the Board of Directors, executed bonds in form and amount and maturing as therein directed:

Now, therefore, the party of the first part, in consideration of the premises and of the sum of one dollar paid by the said parties of the second part the receipt whereof is hereby acknowledged, and in order to secure due and punctual pro rata payment of said several bonds and the interest thereon, has given, granted, bargained, sold, trans- [fol. 60] ferred, mortgaged, pledged, warranted and conveyed, and does by these presents give, grant, bargain, sell, transfer, mortgage, pledge, warrant and convey unto said

parties of the second part, Trustees as herein provided, and its, his and their successors in the trust, with full power and succession and enjoyment of the franchises, rights, and privileges of the party of the first part, all the following property in the County of Bannock and State of Idaho:

1. That certain lot, piece or parcel of land described as follows:

Beginning at the Southeast corner of Lot Two (2) of Section Twenty four (24), Township Six (6) South, Range Thirty-eight (38) East of the Boise Meridian, and running thence West along the center line of said section one thousand two hundred and nine tenths (1209.9) feet more or less to the East one sixteenth (1-16) section line of said section, thence North along said one sixteenth (1-16) section line one thousand three hundred seventeen and eight tenths (1317.8) feet, more or less, to the North one-sixteenth (1-16) section line of said section; thence East along the said North one sixteenth (1-16) section line one hundred seventy five (175) feet, thence Southeasterly on a straight line one thousand six hundred seventy five and eight tenths (1675.8) feet more or less to the place of beginning, containing twenty (20) acres, more or less;

Also Lot Three (3) of Section Twenty four (24), Township Six (6) South, Range Thirty eight (38) East of the Boise Meridian, containing Thirty three and two tenths (33.2) acres;

[fol. 61] 2. That certain lot, piece or parcel of land described as follows:

The West Half (½) of the Northeast Quarter (¼); and the Northwest quarter (¼) of the Southeast Quarter (¼) of Section Twenty four (24) and the Southwest Quarter (¼) of the Southeast Quarter (¼) of Section Thirteen (13), Township Six (6) South, Range Thirty-eight (38) East, Boise Meridian, containing One Hundred Sixty (160) acres, according to the official plat of the survey of said lands returned to the General Land Office by the surveyor General;

3. That certain lot, piece or parcel of land described as follows:

Beginning at the Southeast corner of Section Twenty-four (24), Township Six (6) South, Range Thirty-eight (38) East of the Boise Meridian, thence North Thirty-eight (38) degrees seventeen (17) min. East one thousand six hundred seventy-eight and eight tenths (1,678.8) feet, more or less, to the South one sixteenth (1/16) Section line of Section Nineteen (19), Township Six (6) South, Range Thirty-nine (39) East of the Boise Meridian, thence North thirty-eight degrees seventeen (17) minutes West one thousand six hundred seventy-eight and eight-tenths (1,678.8) feet, more or less, to the East quarter (1/4) corner of Section Twenty four (24), Township Six (6) South, Range Thirty eight (38) East of the Boise Meridian, thence South along East line of Section Twenty four (24) aforesaid, two thousand six hundred thirty five and five tenths (2,635.5) feet more or less, to the place of beginning, and containing Thirty one (31) acres, more or less, said lands being a portion of the West Half (1/2) of the [fol. 62] Southwest Quarter (1/4) of Section Nineteen (19) Township Six (6) South, Range Thirty nine (39) East of the Boise Meridian;

Also all real and personal property of the Company including water rights, ditches, canals, laterals, rights of way, easements, incomes and choses in action whether now owned or hereafter acquired, and particularly the line of principal canal as projected or constructed by the Company beginning at a point on the South bank of the Portneuf river in Lot 7, Sec. 22 9 37, which point bears N. 34 degrees 40 minutes E. 3,040 feet from the S. W. cor. Sec. 22 9 37, thence in a South and westerly direction a distance of 910 meet across said Lot 7; thence in a Westerly direction 1,440 feet across lot 8, Sec. 22 where the canal crosses the section line between Sections 21 and 22 a distance of 1,735 feet north of the S. W. corner of Section 22.

Thence in a North Westerly direction 1,400 feet across Lot 9, 400 feet across Lot 8, 1,430 — across Lot 7, thence in a Westerly direction 2,200 feet across lot 5; thence in a South Westerly direction 2,345 feet across lot 6, all in Sec. 21, where the canal crosses the section line between Sections 20 and 21 a distance of 2,640 feet north of the S. W. cor. of Sec. 21;

Thence in a South Westerly direction 380 feet across the N. E. ¼ of the S. E. ¼ 1,985 feet across Lot 5, 2,410 feet across Lot 6, 1,630 feet across Lot 7, 2,910 feet across the S. E. ¼ of the S. W. ¼ and 880 feet across S. W. ¼ of the S. W. ¼ all in Section 20, where the canal crosses the Section line between Sec. 20 and 29, a distance of 870 feet East of the S. W. cor. Sec. 20;

[fol. 63] Thence in a South Westerly direction 1,110 feet across the N. W. ¼ of the N. W. ¼ Sec. 29 where the line crosses the Sec. line between Sections 29 and 30 at a distance of 315 feet South of the N. W. cor. of Sec. 29, thence in a South Westerly direction 3,960 feet across the N. ½ of N. E. ¼, 1,120 feet across the N. E. ¼ of N. W. ¼, thence in a Southerly direction 1,550 feet across the S. E. ¼ of the N. W. ¼, 3,370 feet across the E. ½ of the S. W. ¼ all in Sec. 30 where the canal crosses the Section line between Sec. 30 and 31, at a distance of 1,240 feet west of the S. E. cor. of the S. W. ¼ of Sec. 30.

Thence 550 feet across Lot 1, 2,080 feet across the N. E. ¼ of the N. W. ¼, 1,930 feet across the S. E. ¼ of the N. W. ¼, 1,070 feet across the N. E. ¼ of S. W. ¼, 4,580 — across N. ½ of S. E. ¼ and 2,080 feet across the S. E. ¼ of the S. E. ¼ all in Sec. 31-9-37, where the line crosses the Township line between Sec. 31-9-37 and Sec. 6-10-37, at a distance of 126 feet East of the N. E. cor. Sec. 6-10-37.

Thence in Southerly direction 1,080 feet across Lot 4, thence 2,810 feet across the S. W. ¼ of the N. W. ¼, 1,580 feet across the N. E. ¼ of the S. W. ¼, 500 feet across the N. W. ¼ of S. W. ¼, 1,840 feet across the S. E. ¼ of S. W. ¼ all in Sec. 5-10-37, where the line crosses the Section line between Sections 5 and 8, at a distance of 10 feet East of the S. E. cor. of S. W. ¼ Sec. 5-10-37;

Thence in a Southerly direction 3,120 feet across the W. ½ of N. E. ¼, 2,710 feet across the W. ½ of S. E. ¼, all in Sec. 8-10-37, where the canal crosses the Section line between Sec. 8 and 17, at a distance of 1,630 feet west of the N. E. cor. of Sec. 17-10-37;

[fol. 64] Thence in a Southerly direction 890 feet across the N. W. ¼ of the N. E. ¼, 430 feet across the N. E. ¼ of the N. E. ¼, 1,640 feet across the S. E. ¼ of the N. E. ¼, 2,930 feet across the E. ½ of S. E. ¼ all in Sec. 17-10-37, where it crosses the section line between Sec. 17 and

20, at a distance of 1,040 feet west of the N. E. cor. Sec. 20-10-37;

Thence in a Southerly direction 1,240 feet across the N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$, 450 feet across the S. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$, 1,520 feet across the S. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$, and 3,840 feet across the W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, all in Sec. 20, where the canal crosses the section line between sections 20 and 29, at a distance of 535 feet East of the S. W. cor of the S. E. $\frac{1}{4}$ of Sec. 20-10-37;

Thence in an Easterly direction 700 feet across the N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 29 where it crosses the Sec. line 1,320 feet East of the S. W. cor. of S. E. $\frac{1}{4}$ of Sec. 20-10-37;

Thence in a North Easterly direction 240 feet across the S. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$, and 360 feet in a South Easterly direction across the S. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ Sec. 20-10-37 where it crosses the Section line 1,080 feet west of the *the* S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, 1,150 feet across the N. W. S. E. cor. Sec. 20-10-37;

Thence in a Southerly direction 3,650 feet across the E. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$, 700 feet across the S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, 1,150 feet across the N. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$, 2,500 feet across the N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$, and 1,330 feet across the S. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ all in Sec. 29-10-37, where the canal crosses the section line between Sections 29 and 30, at a distance of 1,455 feet west of the S. E. cor. Sec. 29-10-37;

Thence in a Southerly direction 1,080 feet across the N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$, in a South Easterly direction 770 [fol. 65] feet across the N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ in a Southerly direction; 1,760 — across the S. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ in a South Easterly direction 3,050 feet across the E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, all in Sec. 32-10-37, where it crosses the Sec. line between Sections 32 and 33, 550 feet North of the S. E. cor. Sec. 32-10-37, Thence in a Southerly direction 780 feet across the S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ Sec. 33-10-37, where the canal crosses the township line between Sections 33-10-37, and Sections 4-11-37 at a distance of 60 feet each of the N. W. cor. of Section 4-11-37;

Thence in a Southerly direction 1,530 feet across Lot 4, thence 1,950 feet across the S. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ Sec. 5, where the canal crosses the Section line between Secs. 4

and five at a distance of 640 feet north of the S. W. cor. of the N. W. ¼ Sec. 4 11 37;

Thence in an Easterly direction 2,000 feet across the S. ½ of the N. W. ¼, thence in a Southerly direction 2,960 feet across the E. ½ of the S. W. ¼, thence in a South Westerly direction 820 feet across the S. W. ¼ of the S. W. ¼ all in Sec. 4 11 37, where the canal crosses the section line between Sec. 4 and 9 at a distance of 845 feet East of the S. W. corner of Sec. 4 11 37;

Thence in a Southerly direction 3,160 feet across the W. ½ of the N. W. ¼, in a south easterly direction 2,980 feet across the N. E. ¼ of the S. W. ¼, 1,310 feet across the S. W. ¼ of the S. E. ¼ and 780 feet in a south westerly direction across the S. E. ¼ of the S. W. ¼ all in Sec. 9 11 37, where the canal crosses the Section line between sections 9 and 16 at a distance of 630 feet west of the S. E. cor. of the S. W. ¼ Sec. 9 11 37;

[fol. 66] Thence in a South Easterly direction 2,110 feet across the E. ½ of the N. W. ¼, 3,080 feet across the S. ½ of the N. E. ¼, and 4,270 feet across the E. ½ of S. E. ¼ all in Sec. 16 11 37, where the canal crosses the section line between Sections 16 and 15 and 15 and 22 at a distance of 5 feet East of the S. E. cor. of Sections 16 11 37;

Thence in a South Easterly direction 1,910 feet across the W. ½ of the N. W. ¼, 1,670 feet across the S. E. ¼ of the N. W. ¼, 2,220 feet across the E. ½ of the S. W. ¼, and 980 feet across the S. W. ¼ of the S. E. ¼ all in Sec. 22 11 37, where the canal crosses the Section line between Sections 22 and 27 at a distance of 675 feet east of the S. W. cor. of the S. E. ¼ Sec. 22 11 37;

Thence in a Southerly direction 2,930 feet across the W. ½ of the N. E. ¼ and 2,790 feet across the W. ½ of the S. E. ¼ of Sec. 27 11 37, where the canal crosses the Section line between sections 27 and 34 at a distance of 365 feet east from the S. W. cor. of the S. E. ¼ Sections 27 11 37;

Also all rights, grants, interest, privileges, easements and franchises acquired by the Company under the contract of H. O. Harkness and others with the State Board of Land Commissioners of the State of Idaho, which, with the consent of said Board has been duly assigned to this Company, dated June 3, 1908, and under that certain contract, dated May 14, 1908, between the State of Idaho and the United

States of America segregating the lands referred to herein, and under any other contracts which may be executed by this Company and the State Board of Land Commissioners relating to the irrigation of lands which may be segregated [fol. 67] by the United States of America for that purpose.

Also all waters, water rights, and appropriations of water, whether presently owned by the Company or hereafter acquired by it, and all rights of way; and also all dams, reservoirs, canals, ditches, laterals, headgates and flumes; and the entire irrigation system of the Company, now owned by the Company or which it may hereafter acquire or construct and wheresoever situate in said State of Idaho, and all tools, supplies, horses, mules, wagons and all commissary stores and construction machinery of the Company wheresoever situate.

Also all notes, contracts, or other evidences of indebtedness owing to said grantor and all money now deposited in escrow with the Idaho State Board of Land Commissioners or with the Treasurer of the State of Idaho, at Boise City, Idaho, whereof the Company is now the owner; and the Company does hereby agree to notify the said Idaho State Board of Land Commissioners or said State Treasurer to hold the said notes and money for the Trustees and to deliver the same when released by the said Board to the Trustee to be held under the terms of this mortgage.

Also such water contracts and notes secured by mortgage or trust deed and such bills receivable owing to the Company and money now owned or hereinafter acquired and such personal property of whatsoever nature or description now owned or hereafter acquired by the Company as shall be lodged with the Trustees under the provisions hereof: [fol. 68] To have and to hold all and singular the above mentioned and described property, interests and other things hereby mortgaged or expressed, or intended so to be, with the appurtenances unto and to the use of the said Trustees, and its, his and their successors forever, but in trust nevertheless, for the equal prorata benefit and security of the holders of the above mentioned bonds at whatever period the same may be issued, without any preference or priority of one bond over another, and for the uses and purposes hereinafter declared.

Article I. So long as no default shall be made in the payment of the principal or the interest of the said bonds according to their tenor and effect, and so long as the conditions of this deed shall be performed the Company shall be entitled to receive its incomes and profits; and may sell, and may exchange for other property, free of the lien hereof, water and water rights to bona fide purchasers thereof and receive and collect the proceeds of such sales and trades precisely as if this mortgage had not been made, and in its discretion may also sell all such construction machinery, tools, horses, mules, wagons, vehicles, and commissary supplies and equipment as may not be needed in constructing said irrigation system. It is, however, definitely understood and agreed that this mortgage is made subject to all of the provisions of a certain contract between the State of Idaho, through its State Board of Land Commissioners, and H. O. Harkness and others, and duly assigned to the Company, dated June 3, 1908, and the provisions of said Act of Congress, known as the Carey Act and the acts amendatory thereof, and the laws of the State of Idaho accepting the [fol. 62] terms of the said Carey Act, and a certain contract dated May 14, 1908, between the United States and the State of Idaho segregating the Carey Act lands referred to herein.

The Company covenants and agrees that it will in apt time and manner faithfully perform its said contract with the State of Idaho. If the Company shall voluntarily or involuntarily neglect to do any act or thing by said contract required to be done by it; or if the Company shall voluntarily or involuntarily do any act or thing by said contract forbidden to be done by it, then such act or such default as the case may be shall be construed to be a material default under the terms of this instrument and the Trustees may immediately exercise all of the rights and privileges conferred upon them by this instrument as in case of default continued for a period of ninety days in the payment of any installment of interest or principal of the bonds hereby secured.

Article II. The Company hereby covenants that it will promptly pay the principal of the bonds secured hereby and each and every of the interest coupons attached thereto as they severally become due, and all such coupons shall

thereupon be cancelled; and the company hereby agrees that no purchase of said coupons nor any loan or advance made upon the same on its behalf or with its privity and no redemption or payment of said coupons by any guarantor thereof shall be taken or construed as keeping such matured coupons alive or in force as a lien upon the property hereby mortgaged as against the bonds secured by this instrument.

[fol. 70] The Company also hereby covenants to pay and discharge all taxes that may be levied or assessed upon its property and upon the bonds secured hereby or upon this instrument.

The Company hereby covenants and agrees that it will at its own cost make and deliver to the Trustees all further assignments, transfers and conveyances reasonably required by the Trustees further to assure the transfer of the title of any property, now or at any time hereafter, pledged hereunder.

Article III. Before any bonds shall be issued under this instrument there shall be pledged hereunder with Colonial Trust and Savings Bank, one of the Trustees, water contracts owned by the Company or notes secured by mortgage of deed of trust upon land and water rights thereunto attached (hereinafter called "notes") or cash money, or partly water contracts, and partly secured notes or cash moneys, aggregating at par one and one half (1½) times the par value of the installment of bonds of this issue then demanded by the Company and issued by the said Trustee hereunder. But the said Trustee shall require the opinion of counsel, selected by it and paid by the Company, to the effect that said water contracts (if water contracts are so deposited) are and constitute direct liens upon real estate capable of being irrigated from the irrigation system of the Company; or that said notes (if notes are so deposited) are amply secured by mortgages or trust deeds which are direct liens upon real estate capable of being irrigated from the irrigation system of the Company to which lands have been attached water rights sufficient to irrigate them; and both such land and water shall be subjected to the lien of such mortgage or deed of trust.

[fol. 71] The Company further covenants and agrees that the par value of the aggregate of the secured notes and

water contracts, which it shall from time to time assign to and deposit with the said Trustee for the purpose of securing and of paying the principal and interest of the bonds issued and to be issued hereunder shall always equal one hundred and fifty per cent (150%) of the par value of the outstanding bonds, less the actual cash then in the hands of the said Trustee applicable to the payment of any matured bond or bonds properly called for redemption prior to maturity as herein provided. The said secured notes and water contracts so deposited with the said Trustee shall by the Company be duly assigned to the Trustees by a good and proper written assignment, and the said mortgages, or trust deeds and water contracts shall be duly assigned by the Company and recorded in the proper county. And the said Trustee shall on behalf of the holders of the bonds secured hereby collect, and if it deems it best to do so, enforce the collection of such secured notes, and water contracts, and shall apply the proceeds of such collection to the equal pro rate payment of the bonds and coupons hereby secured, paying all overdue coupons first. And the Trustees shall, upon demand, and after the payment of such secured note or notes or water contract or contracts, make, execute and deliver a full and complete release and satisfaction of the lien thereof to such purchaser, for each of which they shall be entitled to charge, and the Company shall pay, a fee of Two Dollars.

By "Water Contract", as the same is used in this instrument, is meant a contract for water to be delivered from the company's water supply and to be attached to a [fol. 72] specific tract of land, and securing, by way of mortgage lien upon both land and water, the purchase price of said water until such purchase price shall be fully paid.

By "Note" as the same is used in this instrument is meant a note given to the Company in payment or part payment of the purchase price of water to be delivered from the Company's water supply and secured by mortgage or deed of trust both upon said water and upon the land to which the water is attached.

From all bonds so certified and delivered the past due or matured coupons shall be cut off and cancelled by the Trustees.

No bond shall become binding or obligatory or entitled to any security under this mortgage or deed of trust until it shall have been authenticated by the certificate endorsed thereon signed by Colonial Trust and Savings Bank, one of the Trustees hereunder. All bonds as and when certified shall be delivered to the Treasurer of the Company or to such person as he may in writing designate.

Article IV. The Trustees shall be entitled to collect and receive all sums of money accruing under any of the securities pledged to them, and shall use and employ the moneys so received in paying the principal and interest of the bonds secured hereby. Whenever there shall accrue in the hands of the Trustees moneys in excess of the amount of interest upon the bonds secured hereby required to be paid within seven calendar months thereafter, and also in excess of the amount necessary to protect (as provided in Article XV hereof) the security of the notes and water contracts [fol. 73] so lodged as collateral hereunder, such surplus money shall, on and after the first day of July, 1913, be used and employed in the redemption by lot (at a premium of five per centum of the principal thereof) of bonds of the Company hereby secured. The Trustees shall select by lot as many of said bonds as the accumulations then in their hands (less the reservations in this paragraph specified, and less, also, the costs of the advertisement notices herein provided for) will suffice to pay; and shall call such bonds for payment in the manner and with the effect as provided in the next Article of this instrument.

Article V. The Company hereby reserves the right to call in, pay and redeem said bonds or any of them on July 1, 1913, or on the first day of any July thereafter, by paying the principal of said bonds so called for payment together with a premium thereon of five percentum and also all interest accrued to the date of such redemption.

But notice shall be given by Colonial Trust and Savings Bank, one of the Trustees hereunder, to the holder or holders of the bond or bonds so called for payment, by advertisement published for at least five consecutive days in one or more daily secular newspapers of general circulation published in the City of Chicago, the first publication of the notice in each case to be at least thirty days before the

time fixed for such redemption, which notice shall state the date on which the Company will be prepared to redeem said bonds and the numbers of the bonds so called for redemption. And upon and after the date given in said notice all interest on the bonds so called shall cease; but all such [fol. 74] calls for redemption shall be made through Colonial Trust and Savings Bank, one of the Trustees, and in the event that any amount of bonds less than the amount then outstanding shall be called for payment, the numbers of the bonds to be redeemed shall be determined by said Trustee by the casting of lots. It is further expressly understood and agreed that if after any bond has been called for payment in accordance with the foregoing provisions, the same shall not be presented to said Colonial Trust and Savings Bank, Trustee, for redemption on or before the day fixed therefor in the published notice, the Company may deposit with said Trustee to the credit of such bond, designating it by the number thereof, a sum equal in value to the principal thereof, and in addition the premium of five per centum above specified, together with a sum equal to the interest accrued on such bond to the date fixed for the redemption thereof as aforesaid, which deposit shall be full payment of such bond and the coupons belonging thereto as between the Company and the holder thereof. Said deposit to the credit of any bond of this issue so in the hands of Colonial Trust and Savings Bank, Trustee, shall draw no interest. Thereupon and thereafter such bond and the coupons thereunto belonging shall be excluded from participation in the lien and security afforded by these presents, and the holder shall look for the payment of such bond or bonds, and the interest and the premium thereon, only to the sums so deposited in the hands of Colonial Trust and Savings Bank, Trustee, and in no event to the Company; but said sum so deposited shall be held by said Trustee to the credit of and for the payment of said bond and shall be paid by said Trustee to the holder thereof [fol. 75] upon presentation and delivery of such bond, together with all outstanding coupons thereunto belonging. Said Company, one of the Trustees as aforesaid, shall be under no obligation to call any bonds for payment or to publish notice thereof unless thirty-five days before the date designated for such redemption it shall have accumu-

lated from the net proceeds of said collateral (as in the preceding Article provided) or shall have received from the Company either cash moneys out of which such redemption shall be made or such assurance as it may require that the moneys necessary to redeem the bonds so called will be available and in its hands on the date designated for such redemption, and also cash moneys sufficient in amount to pay the costs of such advertising; and Colonial Trust and Savings Bank, Trustee, as aforesaid, shall not be obligated to the redemption of any bond or bonds under this article unless the funds in its hands for that purpose shall thereto suffice.

Article VI. If the Company shall well and faithfully pay the principal sum due on said bonds when the same becomes payable according to the tenor thereof, and shall pay all the coupons attached to said bonds, and each of them according to the tenor thereof on the presentation and surrender of said bonds and coupons, respectively, and if the Company shall well and truly perform according to the true intent and meaning thereof, all the other things required by these presents to be done by it, then these presents shall be void and shall be released by the Trustees, who shall be entitled to be paid their reasonable charges for preparing and executing such release; but if default shall be made by the Company in the payment of said bonds or any of them, [fol. 76] at the time they become due and payable, or if the Company shall fail to pay said coupons, or any of them, according to the tenor thereof, on the presentation of the same, respectively, or if the Company shall fail faithfully to observe any other covenant or condition herein required to be kept and performed by it, and such default shall continue for the period of ninety (90) days, then the amount of the principal of said bonds, together with all the accrued and unpaid interest thereon (unless such default shall be waived by the holders of a majority of the bonds then outstanding, as hereinafter provided, shall, at the option and request of the holders of one third of the then outstanding bonds, become immediately due and payable. And in such event it shall be lawful for the Trustees to sell and dispose of all and singular the property and interests hereby pledged or mortgaged, or intended so to be, or such portion as the Trustees may deem necessary, at public auction in

the City of Chicago, Illinois, or at such other place as the Trustees may in their sole and unreviewable discretion may select; upon such terms as to credits, partial credits and security for payment as they may think proper or expedient, having first given public notice of the time, place and terms of sale or sales, by advertisements printed not less than once a week for at least four consecutive weeks in one or more newspapers printed and published in the City of Chicago, Illinois, and no other notice or demand whatsoever to or upon the Company shall be necessary.

The Trustees shall have the right to adjourn such sale or sales from time to time in their discretion, giving reasonable notice of such adjournment, and after so adjourning [fol. 77] to make the sale at the time and place to which the same may be adjourned.

The Trustees are hereby further authorized and empowered, either in their own names or in the name of the Company, to make, execute, acknowledge and deliver to the purchaser or purchasers at such sale good and sufficient transfers, assignments and conveyances of the property so sold, and any sale made as aforesaid shall be a perpetual bar, both in law and equity, against the Company, and all persons claiming through or under it, from claiming the property so sold, or any interest therein, and for the purposes aforesaid the Trustees and their successors in trust are hereby constituted irrevocably the attorneys of the first party herein. Out of the proceeds arising from such sale or sales, the Trustees shall first defray the expenses thereof, together with their just and lawful charges for services and expenses, including a reasonable allowance for attorney and counsel fees.

The balance of said proceeds shall be paid over ratably to and among the parties holding said bonds and coupons, paying all overdue coupons first, so far as may be necessary to pay the amounts then due upon the same, including the principal and interest, computed to the time of making the payment, and if any of said proceeds then remain the remainder shall be paid over to the Company or its assigns. It is also agreed that the bondholders, or any one or more of them, or any party in their behalf, may purchase the property at any sale made as aforesaid, and the receipt of the Trustees shall be a sufficient discharge to the pur-

[fol. 78] chaser or purchasers for his or their purchase money.

In the case of default in the payment of the principal or interest in said bonds and the continuance thereof as herein provided, it shall be lawful for the Trustees (when thereunto requested in writing by the holders of one third of the bonds then outstanding), to declare the whole of the principal and interest of said bonds to be at once due and payable and to proceed to foreclose the lien of this instrument upon all of the real estate and personal property of the Company including dams, headgates, ditches, canals and reservoirs in any court of competent jurisdiction in the same manner that mortgages upon real estate are foreclosed and upon the filing of any action to foreclose hereunder, a receiver shall be appointed for all of the property of the Company located in the County of Bannock, State of Idaho, or elsewhere, as a matter of right and without notice.

At any sale under the provisions hereof, whether such sale shall be held by the Trustees or shall be made pursuant to a decree of foreclosure, any matured and unpaid coupons and any of the bonds of the issue hereby secured and then outstanding may be turned in for the account of the payment of the purchase price so bid at such sale, and shall be received and credited thereon at and for the distributive sum that such bonds and coupons would be entitled to receive, had the entire bid been paid in cash.

Article VII Before proceeding to foreclose this trust deed or mortgage, whether by sale under said power or [fol. 79] otherwise, the Trustees shall have the right first to exact from the bondholders reasonable indemnity against all loss, liabilities, costs, attorney's fees and expenses that may be incurred by them in so doing, and upon the tender by the bondholders, or any of them, of such reasonable indemnity, whether previously requested of them or not, and upon the written request of one third in interest of all of the holders of all of said bonds then unpaid and not redeemed, it shall be the duty of the Trustees upon said bonds being lodged with them, in case of any default continuing on the part of the first party, and not waived as hereinafter provided, to foreclose the lien hereby created in such lawful manner as the Trustees may deem best.

Article VIII. No delay or omission by the Trustees in exercising the rights and powers herein granted shall be held to exhaust such rights and powers, or be construed as a waiver thereof, but it is hereby mutually agreed that the holders of the majority in amount of the bonds at the time outstanding may by an instrument in writing at any time, whether before or after the institution of foreclosure proceedings, and prior to the time of the sale thereunder, waive or instruct the Trustees to waive any default (except that of payment of the principal of said bonds at maturity), provided always that no such action on the part of the bondholders shall extend to or be taken to affect any subsequent default, or impair the rights resulting therefrom, and provided that no such waiver or any renewal or extension thereof shall be operative for a longer period than nine months from the date upon which default might [fol. 80] otherwise be declared under this instrument. Not more than one waiver of any particular default shall be availed of under the terms hereof.

Article IX. The Trustees shall be entitled to be reimbursed for all proper outlays of every sort or nature by them incurred in the acceptance and discharge of the trust hereunder, and to receive a reasonable and proper compensation for any duties that they may at any time perform in the discharge of the same, and for all damages or liabilities sustained or incurred by them by reason or on account of any negligence of any of their attorneys, agents or servants, selected and retained with reasonable care, in the performance of the trust hereunder, and all such outlays, fees, commissions, compensations and disbursements shall constitute and continue a lien on the mortgaged property prior to any other claim hereunder.

In case at any time it shall be necessary and proper for the Trustees or their successors to make any investigation respecting any facts preparatory to taking or not taking any action or doing or not doing anything under this instrument, as such Trustees the certificate of the Company, under its corporate seal, attested by the signature of its President shall be sufficient evidence of such fact to protect the Trustees or their successors in any action that they may take by reason of their supposed existence of such fact, and when the Trustees are called upon by the Com-

pany to certify and deliver all or any part of the said bonds secured hereby, they may require the opinion of counsel learned in the law, to be selected by them and paid by the Company, touching any matters or things appertaining thereto.

[fol. 81] The Trustees shall only be responsible for reasonable diligence in the performance of the trust, and shall not be answerable in any case for the act or default of any agent, attorney or employe selected with reasonable discretion.

The Trustees shall be fully protected in acting upon any certificate, statement, report, order, notice, request, consent or other paper or document believed to be genuine and believed to be signed by the proper party, and the Trustees shall not incur any liability on account of any act done or omitted to be done in good faith under the provisions of this deed.

Article X. The party of the second part, as Trustees or otherwise, shall be under no obligation to recognize any person, firm or corporation as a holder or owner of one or more of the bonds secured hereby or to do or refrain from doing any act pursuant to the request or demand of any person, firm or corporation professing or claiming to be such holder or owner, until such supposed holder or owner shall produce the said bond and deposit the same with the Trustees and shall indemnify and save harmless the Trustees to their full satisfaction from any and all costs and expenses, outlays and counsel fees and other reasonable disbursements and damages for which they may become liable or responsible in proceeding to carry out such request or demand.

Article XI. All recitals herein and in said bonds contained are made on behalf of the Company, and the Trustee assume no responsibility as to the correctness of any statement herein or in said bonds contained.

[fol. 82] It is expressly understood and agreed that no obligation whatever rests upon the Trustees to see to the recording or filing of this instrument as a mortgage upon real or personal property, or to do any act suitable or proper to be done for the continuing of the lien of this Indenture, or to give notice of the existence of such lien or

to advise themselves as to the nature of the contracts with the State of Idaho or the State Board of Land Commissioners or the contracts between the United States and the State of Idaho herein referred to or as to the compliance on the part of the Company with said contracts or the laws or constitution of the State of Idaho and of the United States; or to do any act which by the terms of this instrument is to be done by some party other than the Trustees, nor shall the Trustees be responsible for any default on the part of the Company in undertaking to collect or remit from time to time amounts payable, either of principal or interest, upon any of the contracts or secured notes deposited hereunder; nor shall the Trustees be liable or responsible in permitting or suffering the Company, its agents or servants, to retain or be in possession of or manage, conduct or control the canals and irrigation system hereby conveyed or intended to be conveyed, nor shall the Trustees become responsible for any destruction, deterioration, loss, injury or damage which may be done to said canals or irrigation system by the Company, its agents or servants, or by any person or persons whomsoever; nor shall the Trustees be responsible for the consequences of any breach by the Company, or its agents or servants, of any of the covenants or agreements herein or in said bonds contained on the part of the Company to be kept or per-
[fol. 83] formed, nor for or on account of any act of the Company, its agents or servants, of any kind, character or nature whatsoever.

The Trustees shall have no responsibility as to the validity of this mortgage or deed of trust or as to the execution or acknowledgment thereof, or as to the amount or extent of the security afforded by the property covered or purporting to be covered hereby or by the contracts, mortgages or secured notes assigned hereunder; nor as to the value, validity or sufficiency of any of the contracts, notes or mortgages, or the assignments thereof which may be assigned to and deposited with the Trustees as herein provided; nor shall the Trustees be held responsible for the correctness or accuracy of any statement or statements of the Company, whether herein contained, or otherwise, it being expressly understood that the Trustees have made no investigation in regard thereto; neither shall the Trus-

tees be required to pay or keep themselves advised with reference to the payment of any taxes or other charges against any property covered by the contracts or mortgages deposited hereunder, or to take any action or to do any act made requisite by statute or otherwise in effecting, protecting, perpetuating, or keeping good the lien of these presents upon the canals, dams, reservoirs, irrigation system, franchises, water contracts, mortgages or secured notes, or any part thereof, hereby conveyed or assigned or that may hereafter be acquired by the Company and be made subject to the lien thereof.

Article XII. It is hereby declared and agreed as a condition upon which each successive holder of all or any of [fol. 84] said bonds, and all or any of the coupons for the interest of said bonds, receives and holds the same, that no holder or holders of any of said bonds or coupons shall have the right to institute any proceedings in equity, or for the execution of the trusts hereof, or for the appointment of a receiver, or for any other remedy under this mortgage or deed of trust, or the lien hereby created, or otherwise, without first giving notice in writing to the Trustees of default having been made and continued as aforesaid, and unless the holders of one third of the then outstanding bonds have in writing notified and requested the said Trustees as above provided (and a reasonable opportunity has been afforded to the Trustees after the receipt of such notice and request, to proceed and exercise the powers hereinbefore granted or to institute such action, suit or proceeding in the Trustees' own names), and without also having offered to the Trustees adequate security and indemnity against the costs, expenses and liabilities to be by the Trustees incurred therein or thereby; and such notice, request and offer of indemnity may be required by the Trustees as conditions precedent to the execution of the powers and trusts of this indenture, or to the institution of any action in equity for the foreclosing hereof, for the appointment of a receiver, or for any other remedy hereunder, or otherwise, in case of such default as aforesaid in payment of the principal of any of said bonds, in the payment of any semi annual installment of the interest thereon, or any other default by the Company, its succes-

sors or assigns, or failure to perform any of the covenants or stipulations hereof, to be kept and performed on its part. [fol. 85] And it is also agreed that no holder or holders of any of the said bonds, or any of the said interest coupons intended to be hereby secured, shall institute any suit, action or proceeding at law or in equity for the foreclosure hereof, or for the appointment of a receiver, or for the collection of any of the money evidenced by such bonds or coupons otherwise than upon the terms and conditions and in the manner herein provided.

Should any suit or other proceeding be brought against the Trustees by reason of any matter or thing connected with the trusts hereby created, or by reason of their being such Trustees they shall be under no obligation to enter any appearance by counsel or in any way to appear and defend such suits or other proceedings until indemnified to their full satisfaction for so doing; but they may, nevertheless appear and defend such suits and proceedings without indemnity, if they elect so to do, and in such case they shall be compensated therefor from the trust fund.

Article XIII. Wherever the word Trustee or Trustees occurs in this instrument it shall be construed to mean Trustee or Trustees for the time being. Any Trustee hereunder may be removed by the owners and holders of three-fourths in amount of the bonds hereby secured and at the time outstanding, by written instrument executed and acknowledged by them, and filed with the Trustees and filed in the office of the Recorder of Deeds of Bannock County, Idaho, and accompanied by affidavit or affidavits of the signers thereof, showing the amount of their holding of such bonds, and that notice of such removal has been served upon such Trustee.

[fol. 86] Article XIV. Any Trustee hereunder may resign or discharge itself or himself of and from the trust hereby created, by notice in writing to the Company given three (3) months before such resignation is to take effect, or such shorter time as the Company may accept as sufficient notice, and in case of a vacancy in the office of Trustee, by resignation or otherwise, a successor or successors may be appointed by the holders of a majority of the bonds then outstanding, by an instrument in writing duly signed and

acknowledged by them which instrument shall be recorded in the office of the Recorder of Deeds of the County of Bannock, in the State of Idaho, or in case said majority do not agree upon the appointing of a new Trustee or Trustees within thirty (30) days after a vacancy shall occur, then the Company, or the holder of any of said bonds, may apply to any court of original jurisdiction in the County of Bannock, State of Idaho, for the appointment of a new Trustee or Trustees upon such notice as such court shall prescribe to be given, in such manner or upon or to such party or parties, person or persons, as such court shall direct, or upon such notice as shall be in accordance with the rule and practices of the court, and such Trustee or Trustees so appointed by said majority in interest of said bondholders, or by said court shall, on its, his or their acceptance of it, his or their appointment thereby and thereupon become and be vested with all the powers, rights, estates and interest granted to or conferred upon said party of the second part, Trustees by these presents without any further assurance or conveyance whatsoever.

[fol. 87] Article XV. The Company reserves the right at any time hereafter to substitute for any water contracts or any notes and mortgages then lodged with the Trustees pursuant to the provisions of this instrument: (a) either cash moneys in an amount equal to the principal of such water contracts or such notes and mortgages together with all arrears of interest thereon and interest computed to the day at which the Company's next coupon is payable; (b) or other water contracts or other notes and mortgages, or partly cash moneys and partly water contracts and notes and mortgages, aggregating the same or a greater face value of principal than the water contracts or notes and mortgages so withdrawn. But all such substituted water contracts or notes and mortgages shall be held under precisely the same trusts as the surrendered water contracts or notes and mortgages and shall be received by the Trustees only when all and singular the provisions of this instrument governing the lodgment of water contracts and notes and mortgages for the issuance of bonds as provided in Article III hereof have been fully complied with and performed.

All moneys paid in substitution for water contracts,

notes, and mortgages withdrawn under the provisions hereof shall be applied by the Trustees to the redemption of bonds of this issue under the provisions of Article IV hereof so far as the same will thereunto suffice.

If default shall be made in the payment of any water contracts or of any notes and mortgages lodged with the Trustees under any of the provisions of this instrument, or if the makers thereof shall fail to do and perform the several [fol. 88] stipulations thereof so that a default might be declared under the terms thereof, it shall be lawful for the Trustees, when thereunto requested by the holders of one third in amount of the bonds of the Company then outstanding, to proceed in such manner as they may deem best to enforce the collection of said water contracts or notes and mortgages, or of any of them, and in default of other funds in a sum equal to the principal and interest accrued thereon, and the costs of the proceeding, the Trustees may become the purchasers at any foreclosure sale of the lands and waters covered by any such water contracts or such mortgages; and thereupon said lands and waters shall become subject to the lien hereof to the same extent as if said property has been specifically named herein. The Trustees may, upon the like request of the holders of one-third in amount of the bonds hereby secured (and when the moneys in their hands or when moneys furnished by the bondholders for that purpose will thereunto suffice) pay taxes, assessments, levies and other charges upon any lands and waters described in any water contracts or any mortgages so lodged with them which might be or become liens superior to the liens of such water contracts or mortgages, and may also pay the necessary costs, expenses and attorney's fees incurred in that behalf, to the end that the security afforded by such water contracts and by such notes and mortgages may continue unimpaired and in full force and effect. All moneys thus advanced for the protection of the security of such collateral shall be repaid (together with the interest thereon from the date of the advancement to the date of the payment thereof at the rate of six per centum per annum) out of the first moneys belonging to this [fol. 89] trust thereafter coming into the hands of the Trustees. But it is expressly covenanted and agreed that the Trustees shall be under no obligation to protect the col-

lateral or the security thereof or to make any investigation of or concerning the same as in this paragraph provided until the holders of one-third in amount of the bonds then outstanding have in writing requested the Trustees to act in the premises, and have also furnished the Trustees with indemnity in like manner and amount as provided (in case of foreclosure) by Article VII of this instrument.

In witness whereof, Portneuf Marsh Valley Irrigation Company, Limited, has caused these presents to be signed in its name by its President, sealed with its corporate seal and attested by its Secretary, for and in behalf of it; and said Colonial Trust and Savings Bank, to evidence its acceptance of the trust hereby created has caused these presents to be signed in its name, by its secretary and sealed with its corporate seal; and the said L. C. Rose, to evidence his acceptance of the trust hereby created has hereunto set his hand and seal, all on the year and day first above written.

Portneuf-Marsh Valley Irrigation Company, Limited, by D. W. Standrod, President. Attest: T. M. Edwards, Secretary. (Corporate Seal.) Colonial Trust and Savings Bank, Trustee, by W. F. Van Buskirk, Secretary. (Corporate Seal.) L. C. Rose. (Seal.)

[fol. 90] State of Idaho,
County of Bannock, ss:

On this 16th day of October, in the year One Thousand Nine Hundred and Nine, before me, personally appeared D. W. Standrod, and T. M. Edwards, known to me to be respectively the President and Secretary of Portneuf-Marsh Valley Irrigation Company, Limited, the Corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same. And the said D. W. Standrod and T. M. Edwards, being by me first duly sworn, did each depose and say that they are respectively the duly elected qualified and acting President and Secretary of Portneuf-Marsh Valley Irrigation Company, Limited, (a corporation) which is described in and which executed the foregoing instrument, and that the seal attached to said instrument, purporting to be the corporate seal of

the Portneuf Marsh Irrigation Company, Limited, is such corporate seal, and that they signed the said instrument as such President and Secretary respectively of said corporation, and they acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act and deed and as the free and voluntary act and deed of said Portneuf Marsh Valley Irrigation Company, Limited, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 16th day of October, A. D., 1909.

My commission expires May 24, 1910.

H. E. Wasley, Notary Public. (Seal.)

[fol. 91] State of Illinois,
County of Cook, ss:

I, H. A. Sadler, a Notary Public, in and for said County of Cook, in the State of Illinois, do hereby certify that on the 19th day of October, A. D., 1909, personally appeared before me W. F. Van Buskirk, Secretary of Colonial Trust and Savings Bank, trustee, named in the foregoing mortgage or deed of trust, and personally known to me to be such Secretary and to be the same person whose name is subscribed to the foregoing instrument, as such secretary and acknowledged that he did sign, seal and deliver the same for the uses and purposes therein set forth, as his free and voluntary act and deed, and as the free and voluntary act and deed of the said Colonial Trust and Savings Bank, Trustee. And the said W. F. Van Buskirk, Secretary, having been duly sworn, did depose and say that the seal affixed to said instrument is the corporate seal of said Colonial Trust and Savings Bank of Chicago, and was so affixed pursuant to authority of the Board of Directors and to the by laws of said Bank.

In Witness whereof I have hereunto affixed my hand and notarial seal, this 19th day of October, A. D., 1909.

My commission expires on the 7th day of August, 1911.

H. A. Sadler, Notary Public. (Seal.)

State of Illinois,
County of Cook, ss:

I, H. A. Sadler, a Notary Public in and for said County, in the state aforesaid, do hereby certify that L. C. Rose,

Trustee, personally known to me to be the same person [fol. 92] whose name is subscribed to the foregoing instrument, this day appeared before me in person and acknowledged that as such Trustee, he signed, sealed and delivered said instrument, as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this 19th day of October, A. D. 1909.

My commission expires on the 7th day of August, 1911.

H. A. Sadler, Notary Public. (Seal.)

State of Idaho,
County of Bannock, ss:

I, T. M. Edwards, being duly sworn depose and say that Portneuf-Marsh Valley Irrigation Company, Limited, is a corporation existing by virtue of the laws of the State of Idaho, and is the corporation which, as mortgagor, executed the foregoing instrument or mortgage; that I am the secretary of said corporation, and as such officer am generally familiar with all matters connected with the making of said mortgage, and know the motive, purpose and design of such corporation in making the same; that said mortgage is made in good faith and without any design to hinder, delay or defraud creditors; and that I make this affidavit on behalf of said corporation as its Secretary.

T. M. Edwards.

Subscribed and sworn to before me this 16th day of October, A. D. 1909. H. E. Wasley, Notary Public. (Seal.)

State of Idaho, ss:

[fol. 93] Office of the Attorney General

I herewith approve the within First Mortgage and deed of Trust.

D. C. McDougall, Attorney General of the State of Idaho.

Dated Boise, Idaho, October 29th, 1909.

Recorded at the request of D. W. Standrod Nov. 27th, 1909 at 4:16 P. M., by W. A. Hyde, Deputy. Fee $22.20. E. G. Gallet, Recorder.

Exhibit "B" to Bill of Complaint

Contract No.	Name	No. of shares
1	Heriot Riddle	80
2	Conrad Leader	80
3	J. E. Yoxall	40
4	F. C. Knight	80
7	A. M. Susong	80
8	Frank Flint	40
9	Mary C. Card	80
10	Jos. Murphy	80
11	O. A. Smith	80
14	H. M. Tibbatts	80
20	Wesley K. Walton	40
24	H. M. Tibbatts	80
32	Anton K. Dahlen	40
34	C. N. Ray	80
35	D. E. Kent	80
36	W. I. Layton	80
38	A. O. Treganza	40
40	Robert L. Van Eaton	40
[fol. 94] 41	Anna R. Todd	80
42	Vinnie R. Walling	80
43	T. W. Monell	40
45	Harry C. Taylor	80
46	E. G. Widmann	80
47	T. W. Monell (Assignee)	40
49	E. G. Widmann	80
51	Fred L. Olmstead	80
52	T. C. Lawler	80
55	E. E. Gillespie, (assignee)	80
56	F. W. Benninger, (assignee)	80
57	Ben S. Crow	80
59	C. K. Hensman	27 35
60	Chas. Webber	40
61	Chancy Sessions	39 81
65	Sophia C. Roberts	40
66	F. J. Card	
67	C. H. Overton	
69	J. W. Alldred	80
71	Thos. R. Bennett	80
72	Dean Vincent	40
73	Harland A. Valentine	40

Contract No	Name	No. of shares
75	D. C. Olmstead	52 76
76	N. J. Hartvigsen	40
80	Mary F. Zoert	80
81	W. F. Kasika	80
85	Anna Kelly	80
86	W. T. Morley	40
90	G. E. Tripp	40
96	N. S. Pond	80
98	L. W. Woodin	40
99	E. G. Widmann	120
101	Emma Beckley	40
104	John H. Moyes	40
105	H. V. Monell	80
109	O. W. Bishop	52 67
110	T. W. Bennett	40
111	Robert Dill	80
112	Fred L. Olmstead	40
[fol. 95] 114	O. P. Merrill	40
115	E. C. White	80
116	Wm. M. Underwood	40
118	E. E. Gillespie	40
119	H. B. Monell	80
121	L. D. Brown	80
123	Geo. A. Nixon	80
125	W. H. Coffin	52 60
127	Albert S. Maxham	80
131	F. C. Knight	80
132	Robert M. Ingolls	80 11
133	Charles F. Ingalls	80
137	Robert Dill	53 40
138	Conrad Leader	40
139	Thomas Coffin	80
140	John Anderson	40
141	O. M. Ingedahl	79 93
142	W. A. Webster	40
144	F. W. Benninger	80
145	Jas. C. Mock	40
146	David Burnett	40
149	Chas. O. Reynolds	81 03
150	C. W. Woody	40
153	John Dahlke	40

Contract No.	Name	No. of shares
154	Thomas Jenkins	36 21
157	Sarah F. Skeeles	80
158	F. P. Sleeper	80
161	Wm. I. Anderson	40
162	H. E. Conine	40
164	Benj. A. Norstrom	40
165	D. W. Conine	80
168	Jo. S. Morrison	40 24
169	Herman Anderson	79 75
170	Mrs. Georgia M. Statler	40
171	E. L. Mattoon	52 24
172	Guy C. Eaton	40
174	R. H. Christensen	40
176	Frank W. Blue	40
177	F. Lee McDonough	80
[fol. 98] 178	Lucien C. Farr	20
179	Lucien C. Farr, Jr.	42 56
180	Ira Goff and Sarah Goff	40
181	Chas. McCormick	40
182	Lucien C. Farr, Jr.	
183	Lucien C. Farr	
184	Conrad Leader	15
187	Chas. C. Hurst	15
189	Conrad Leader	10
191	Heber F. Johnson	10
192	C. B. McCormick	15
193	L. H. McCormick	15
194	Zeb Fitts	5
195	Abner L. Nichols	10
196	Leo V. Johnson, Lorin Cruddle	25
197	J. S. Whitaker	
198	L. H. McCormick	10
199	Glee Smith and Paul Garvin	10
200	Ira Goff	40
201	Conrad Leader	15
202	Otto Roundy	
203	Lorenzo M. Richards	5
204	Lorenzo M. Richards	5
205	Lorenzo M. Richards	5
206	Lorenzo M. Richards	5
207	Village of Downey	

Contract No	Name	No. of shares
208	David Larsen	
A 8	Frederick L. Barnes	10
A 9	W. P. Havenor	172 56
A 10	Ben S. Crow	80
A 11	W. H. Chester	10
A 18	J. J. Barnes	30
A 20	L. T. Whitaker	39 97
A 21	L. W. Johnson	60
A 23	C. H. Norton	15
A 24	Wm. J. Bybee	40
A 26	Michael V. Burton	1
[fol. 97] A 27	J. H. Byington	2
A 29	Christian Dolder	20
A 30	Gottfried Beutler	20
A 38	Andrew J. Newbold	40
A 39	Ada P. Risner	40
A 46	Mary E. Linton	5 44
A 47	Peter W. Olson	31 6
A 48	C. W. Hancock	52 33
A 50	O. P. Merrill	5 05
W 1	John Layton	40
W 2	Geo. H. Maughn	35
W 3	T. D. Wallace	5
W 4	Geo. W. Hobbs	40
W 5	H. F. Johnson	20
W 6	Morris A. Simpson	65
W 7	J. N. Capener	80
W 8	John Burrup	1
P 2	J. E. Clegg	10
P 3	A. W. Perkins	9 54
P 4	F. H. Palmer	10
P 6	Martha A. Wise	20
P 7	R. H. Palmer	10 85
P 8	R. H. Palmer	13 39
P 10	H. M. Tibbitts	10 43
P 11	Pinkney & Ferris	17 72
P 12	F. W. Fautek	5 51
P 13	Lorin Criddle	9 83
P 14	L. V. Johnson	11 54

[File endorsement omitted.]

[fol. 98] IN UNITED STATES DISTRICT COURT

ANSWER—Filed August 28, 1923

Now comes the Portneuf Marsh Valley Canal Company, Ltd., a corporation, and for answer to the bill of complaint, so far as it applies to this defendant, admits, denies and alleges as follows:

I

As to paragraph 8 of the bill of complaint, this defendant has no knowledge, information or belief, and upon said ground denies that all or any of said bonds representing an aggregate principal of $300,000.00 were executed by the said defendant, Portneuf Marsh Valley Irrigation Company, and upon the same ground denies that the same was subsequently or at all certified by the Colonial Trust and Savings Bank, according to the terms of the trust deed, or otherwise, or at all, and denies that thereafter, all or any of said bonds were issued, delivered or negotiated in accordance with the terms or provisions of a deed of trust or indenture of mortgage, and likewise, upon the same ground, denies that each or any of the said bonds described are now outstanding or unpaid, or are held by the purchasers thereof in good faith and for value, or at all.

2

Answering paragraph 9, this defendant has no knowledge, information or belief upon which to base an answer [fol. 99] to said paragraph, and, therefore, and upon that ground, denies that the stockholders and directors, or stockholders or directors of the said Portneuf Marsh Valley Irrigation Company, Ltd., duly, or at all, authorized the execution and delivery, or execution or delivery of said or any deed of trust or indenture of mortgage, and upon the same ground, denies that they, or either of them, authorized the execution or delivery of the bonds thereby secured to be paid, and denies each and every allegation of said paragraph 9, and requires proof thereof.

3

Answering paragraph 15 of the bill of complaint, the defendant has no sufficient knowledge, information or belief upon which to answer the said section, and therefore denies that subsequent to the execution of the aforesaid deed of trust or indenture of mortgage, there was deposited with and pledged and assigned to the said trustees, certain or any contracts entered into by the said Portneuf-Marsh Valley Irrigation Company, Ltd., for the sale of water rights or shares in its irrigation system, or at all, and requires that the plaintiff make strict proof of said allegation; and upon the same ground denies that the list of contracts referred to in said paragraph and particularly marked Exhibit "B" were assigned to and are now in the hands of the plaintiff, and denies that the plaintiff is the owner and holder thereof, [fol. 100] but alleges that the number of shares or interest in said irrigation works, purchased under such contracts, now remain in the hands of the plaintiff as such trustees, or otherwise, and further say that if such shares or interest in the irrigation works purchased in such contract are now in the hands of the plaintiff, that by reason of the matters and things hereinafter in this answer set out, are the property of this defendant corporation.

4

Answering paragraph 16, denies that plaintiffs, as trustees, or otherwise, under said or any deed of trust or indenture of mortgage, now own or hold in pledge or in the place or stead of such or any water contracts, said or any respective shares of stock purchased under the aforesaid water contract, or at all, but alleges that by reason of the matters hereinafter set forth, that all water stock mentioned and described, and the interest in the said irrigation company, have each and all been sold to this defendant company, who is now the owner and holder thereof;

5

Answering paragraph 19, this defendant has no knowledge, information or belief on which to answer the same, and therefore, upon said ground, denies that these plain-

tiffs have performed any service in connection with their, [fol. 101] or any, trust under the terms of said or any deed of trust or indenture of mortgage, and denies upon the same ground that they have expended any sums of money in that behalf or otherwise, or at all.

6

Answering paragraph 20, admits that the business of this defendant, and the use which is made by them of the property conveyed by said deed of trust, consists chiefly in the operation of a certain irrigation system situated in the County of Bannock, State of Idaho, and the supplying of water for irrigation purposes to its stockholders, who are residents of said county, and in this connection, this defendant alleges that the defendant, the Portneuf Marsh Valley Irrigation Company, Ltd., on or about the 1st day of Aug. 1916, conveyed all their interest in and to the said irrigation system to the defendant Portneuf Marsh Valley Canal Company, and that since the 1st day of April, 1915, this defendant has had the entire control and operation of the said system, and has kept up and maintained, reconstructed and improved at a great expense the dams, ditches and right-of-way described in the said deed of trust, and that the same is a going concern and charged with a public use.

7

Answering paragraph 21, this defendant admits that if the operation of the business of this defendant should be [fol. 102] suspended during the pendency of this suit, it would greatly injure the value of this property both for purposes of sale and otherwise, and would cause irreparable injury to this defendant, without any benefit to the plaintiff, and would add great unnecessary charges to the costs of this suit, and in this connection, this defendant alleges that the said plant and irrigation system is, and at all times has been preserved and operated by the said company to distribute water to its stockholders in accordance with the laws of the State of Idaho, for the irrigation of approximately five thousand acres of land situated under said canal and entitled to water therefrom, and that there is no need

or necessity for the appointment of a receiver pending this action.

For a further answer to the plaintiff's bill of complaint, and particularly Section 22 thereof, this defendant admits that it has claim to some interest upon the property described in said deed of trust, and denies that such interest or lien is subject to or subordinate to the aforesaid deed of trust or to the indebtedness secured thereby; and as to the claim of this defendant and its acts to preserve and protect said rights and liens, this defendant alleges:

I

That the trust deed referred to and set forth in the plaintiff's bill of complaint by its terms provided among other things:

[fol. 103] "It is, however, definitely understood and agreed that this mortgage is made subject to all of the provisions of a certain contract between the State of Idaho, through its Board of Land Commissioners, and H. O. Harkness and others, and duly assigned to the Company, dated June 3, 1908, and the provisions of said Act of Congress, known as the Carey Act, and the acts amendatory thereof, and the laws of the State of Idaho accepting the terms of said Carey Act, and a certain contract dated May 14, 1908, between the United States and the State of Idaho, segregating the Carey Act lands referred to herein."

II

That the contract referred to was what is commonly known as the Carey Act Contract, made by the said State of Idaho on June 3, 1908, with H. O. Harkness and others, and which was assigned to the defendant, Portneuf Marsh Valley Irrigation Company, and which provided among other things:

A. That the said Company contracted to complete a reservoir, canal and irrigation system, said reservoir to have a capacity to store 27,250 acre feet of water, and canals, flumes, headgates and laterals sufficient to deliver five-eighths of a cubic foot per second of water to be distributed

over twenty thousand acres of land described in said contract;

B. That the said H. O. Harkness and his successors will sell to the owners of land under the said canal system, water rights of said system, and that each share of such water [fol. 104] right shall represent the carrying capacity of said canal sufficient to deliver water at the rate of one eightieth (1-80) of one second foot per acre, and each share of water right sold or contracted, as provided therein, should represent a proportionate interest in said irrigation works, together with water rights and franchises therein, based upon the number of shares finally sold in said irrigation works.

C. For the purpose of transferring the possession and management of said canal, the said contract further provided:

"It being necessary to provide a convenient method of transferring the ownership and control of said canal and irrigation works from the said party of the second part herein to the purchasers of said water rights in said canal, and for determining their rights among themselves, and between said purchasers and the party of the second part herein, and for the purpose of operating and maintaining said canal during the period of construction and afterwards, and for the purpose of levying and collecting tolls, charges and assessments for managing said canal and for the management and operation thereof. It is hereby provided that as soon as said lands are ordered thrown open for settlement, a corporation to be known as the Portneuf-Marsh Valley Canal Company, Limited, shall be formed at the expense of the party of the second part, the articles of incorporation of said company to be approved by the Attorney General of the State of Idaho; that the authorized capital stock of said corporation shall be Twenty Thou[fol. 105] sand (20,000) shares, which amount is intended to represent one share for each acre of land which may hereafter be irrigated from said canal all persons who, prior to the formation of such corporation, has purchased or acquired water rights or shares of water from said second party for the irrigation of lands embraced in this contract and being then the owners of such rights of shares,

shall be entitled to receive and have issued to them, shares in such corporation so to be formed, equal in number to the water rights or shares of water then owned and held by such persons, and the remainder of the capital stock of such corporation shall be issued to the party of the second part in consideration of the covenants and agreements herein contained, in order to enable it to deliver to purchasers of water rights the shares of stock representing the same. Said shares of stock, however, shall have no voting power and shall be without force or effect until they have been sold or contracted to be sold to the purchasers of land under said irrigation works.

At the time of the purchase of any water right after the formation of said corporation, there shall be issued to the purchaser thereof, the shares of the capital stock of said corporation for each acre of land entered or filed upon. That the said party of the second part herein shall, in case said water rights or shares of stock are not fully paid for require the endorsements and delivery to it of said stock, and shall at the same time require of said purchasers an agreement that until thirty five (35%) per cent of the purchase price of said stock has been paid, the said party of the second part herein shall vote said stock in such [fol. 106] manner as it may deem proper at all meetings of the stockholders of said corporation.

But the said second party hereto, nor the said Portneuf Marsh Valley Canal Company, Limited, cannot in any manner control any of the said system so as to limit the liability of the second party under the terms of this contract.

The said Portneuf Marsh Valley Canal Company, Limited, shall have the management, ownership and control, as above set out, of the said irrigation system as fast as the same is completed and turned over to it for operation by the said party of the second part, as hereinafter provided. Whenever it is certified by the Chief Engineer of the Company, and the State Engineer of Idaho, that certain portions of the said irrigation works have been so far completed as to permit the operation thereof for delivery of water to purchasers of water rights, the same may, with the consent of the State Land Board, be transferred and turned over to the said Portneuf Marsh Valley Canal Company, Limited, for operation. Such transfer and operation,

however, shall not in any manner lessen the responsibility of the said second party with reference to the terms of this contract, nor shall such consent upon the part of the State Land Board be construed as a final acceptance of such portion of said canal, it being always understood that the acceptance of said irrigation system must be in its entirety, and that the bond given for the faithful performance of the said contract must be made and be liable for the substantial completion of the entire irrigation system.

[fol. 107] B. "XVII. Existing Laws Part of Contract.—It is hereby understood and expressly agreed that this contract is made and entered into by virtue of the provisions and subject to all the conditions of an act of Congress, commonly known as the "Carey Act", approved August 18, 1894, and the acts amendatory thereto and the laws of the State of Idaho, accepting the terms and provisions of the said "Carey Act" and the contract between the United States, and the State of Idaho, segregating from the Public domain the lands herein designated as "Carey Act lands," and that such laws and contract are as much a part of this contract as if specifically herein set forth."

C. "XIX. Delivery of Water.—It is agreed that the said Portneuf Marsh Valley Canal Company, Limited, shall not deliver water to or permit the use thereof from said irrigation system by persons who have not purchased water rights or who are not holders of stock in said Portneuf Marsh Valley Canal Company, Limited, or who are not otherwise entitled thereto under this contract."

III

That on or about the 8th day of June, 1908, the said contract was assigned to the Portneuf Marsh Valley Irrigation Company, Limited, a general corporation organized under the laws of the State of Idaho, for the purpose, among other things, to construct said canal system, to organize the Portneuf Marsh Valley Canal Company, Ltd., a gen- [fol. 108] eral corporation, and to sell water contracts in accordance with the terms of the said state contract.

IV

That thereafter, the said Portneuf-Marsh Valley Irrigation Company, Ltd., constructed an irrigation system, but did not comply with the contract referred to, made by H. O. Harkness and the State of Idaho, and did not construct a reservoir capable of holding 27,500 acre feet of water, but did construct one capable of holding 16,410 acre feet, and did not construct ditches capable of carrying and delivering 1.80 of a cubic foot per second of water to the lands described in said contract, but constructed a canal system that would partly carry and deliver water to only 8,000 acres, in accordance with the terms of said contract, and that the construction of the said canal was incomplete and unfinished when it was turned over to the said Portneuf-Marsh Valley Canal Company, Ltd., for operation.

V

That the Portneuf-Marsh Valley Irrigation Company, Ltd., in accordance with the terms of said state contract, did on or about September, 1908, prepare articles of incorporation and organized and incorporated the Portneuf-Marsh Valley Canal Company, Ltd., which corporation was and is a general corporation organized under the general laws of the State of Idaho, and is a non profit corporation [fol. 109] with capital stock of $20,000.00, of the par value of $1.00 per share, and was formed for the purpose of taking over, managing and operating the irrigation system constructed by the Portneuf-Marsh Valley Irrigation Company, Ltd., under the state contract, and to deliver water to its stockholders, the purchasers or owners of land under the said canal system, and susceptible of irrigation therefrom. And with power to levy and collect tolls, charges and assessments for the carrying on and maintaining of said irrigation system, and for the management and operation thereof.

VI

That as a part of the organization of the Portneuf-Marsh Valley Canal Company, Ltd., the defendant, Portneuf-Marsh Valley Irrigation Company, Ltd., prepared and caused to be adopted by-laws of the Portneuf-Marsh Valley Canal Company, Ltd., which, among other things provided:

"A. Sec. 5. Expense of Maintenance. For the purpose of defraying the expense of the company of whatsoever kind and paying the costs for maintaining, managing and operating said canal system, the Board of Directors of the Company are authorized and directed to levy such tax or taxes, charge or charges, assessment or assessments, as in the judgment of the Board may appear necessary or proper to raise the money or revenue required. All such expenses, taxes, costs and charges to be apportioned among all the stock issued by the Company, which has been applied and [fol. 110] made appurtenant to land, but no such assessment or tax shall be levied against shares which have been issued to or are held for the benefit or in the interest of the Portneuf-Marsh Valley Irrigation Company, Limited, and which has not been sold or made appurtenant to land.

"The taxes or assessments herein provided for, shall be levied against the owners of the shares of stock applied or made appurtenant to land, regardless of whether water has been used for irrigation purposes by the holder of said stock.

"The Directors shall give notice by publication in a newspaper for a period of two weeks, of the amount of said charge, tax, or assessment, against each share of stock and of the time and place of payment thereof. Upon the failure to pay such charge, tax or assessment for a period of ten days after the same falls due, the Board of Directors may refuse to deliver water to the holder of such stock or for the land described in such stock certificate, until such charge, tax or assessment, with an fines or penalties imposed by the Board of Directors or by the rules and regulations of the Company, have been duly paid.

"The Board of Directors may at any time after the first of January of each year, make an estimate of the amount of money necessary for the maintenance, repair, control and operation of the Company's canal and irrigation system and other necessary expenses of the corporation, and at such meeting or at a subsequent meeting, may levy the tax, assessment or charges hereinbefore referred to, and make such other and subsequent levies as the needs of the Company may from time to time require, and may provide [fol. 111] that such taxes, charges and assessments may be paid in installments."

"B. Sec. 6. Statutory Assessments.—In addition to the method provided in these by-laws for raising revenue and money for the use of the Company, the Directors may levy assessments upon the stock of the corporation as provided by the laws of the State of Idaho, but no stock shall be regarded as issued within the meaning of such laws, unless the certificate therefor contains a description of the land to which such stock and the water to be delivered thereunder shall be applied and made appurtenant."

VII

That beginning about the day of , 1908, the Portneuf-Marsh Valley Irrigation Company, Ltd., sold a large number of contracts to settlers who filed upon and afterward became the owners of lands under the said system and susceptible of irrigation therefrom, and caused to be issued to them stock in this defendant company, and has continued so to issue said stock to the amount of 11,582 shares, and that the said stock, when issued, contained the name of the purchaser and the description of his lands to which the said water stock was made appurtenant, and that by the terms of the said contract, the said stock was subject to assessment and tolls for the maintenance, up-keep and distribution of the work necessary to be done to distribute the water in accordance with the said contract, and that the [fol. 112] said stock also conveyed to the purchaser of said stock a proportionate interest in the water rights, canals, reservoirs and rights of way belonging to the said system, and each of the said original contracts for the sale of the water stock provided among other things:

"Said Portneuf-Marsh Valley Canal Company, Limited, is to have the power to levy all necessary tolls, charges and assessments upon all owners of water in proportion to their respective holdings of stock, whether the water is used or not."

VIII

That prior to the execution and delivery of the trust deed or indenture of mortgage sought to be foreclosed and attached to and made a part of this bill of complaint, the said State Carey Act contract, articles of incorporation of the

Portneuf-Marsh Valley Irrigation Company, Ltd., articles of incorporation of the Portneuf-Marsh Valley Canal Company, Ltd., and the by-laws, contracts and agreements herein referred to, were a matter of public record, and prior to the time that the said deed of trust was delivered or any bonds sold under the provisions thereof, the said trustees and the purchasers of said bonds had actual or constructive notice of the contracts and agreements which became by the terms thereof and by operation of law a part thereof, and that they, and each of them, well knew that the said contract and the certificate of stock of this defendant corporation were issued upon the expressed [fol. 113] agreement and understanding that they and each of them, were subject and liable under the terms of said contract and the laws of the State of Idaho, for the payment of the necessary tolls, charges and assessments that would be required to keep up, maintain and control the said system, and for the delivery of water therefrom, and well knew that the contracts, agreements, assignments of stock and by-laws were made, prepared and approved by the Portneuf-Marsh Valley Irrigation Company, Ltd., under the terms of the said contract, and that said plaintiffs took the assignment thereof and took the trust deed subject to the rights and debts of this defendant company under said state contract and the laws of the State of Idaho.

IX

That notwithstanding that the said system was not completed in accordance with the terms of the State contract, the said system was turned over to this defendant company on or about the 1st day of April, 1915, and that since said time it was the duty of this company under the said contracts, to keep up, and maintain the said canal system so as to deliver to its stockholders the water to which they are entitled and which they required for the irrigation of the said land, and that in so doing it has been necessary for this company to expend large sums of money for the maintenance, improvement and completion of said canal system; that this defendant company had no funds or income whereby to pay the said expenses, except their right to levy tolls and assessments under the terms of the said contract, with the State Board of Land Commission-

ers and the laws of the State of Idaho, and that from time to time, as the work was done and it became necessary, it has levied assessments upon all of the stock outstanding which was made appurtenant to the lands and by the terms of said contract assessible, and that at all times, the owners of the stock of said corporation, who are residing upon and cultivating their land, have paid said assessments each and every year and, as this defendant is informed and believes, have made the payments due upon the contract to the Portneuf-Marsh Valley Canal Company, Ltd., for the purchase price of said water stock; that from such stockholders, since the year 1915, this defendant has levied assessments and collected the sum of $156,717.90, and has expended upon the said canal system for the necessary expense of maintenance, up-keep, improvement and distribution, the sum of $156,368.88. A complete list of the stockholders, together with the number of shares of stock, is hereunto attached and marked "Exhibit A", and asked to be made a part of this answer as if fully set out at length herein.

[fol. 115] X

That at the same time and for the same purpose, this defendant company levied the same assessment against the shares of stock of the remaining shareholders, and notified each of them of the said assessments and the purposes thereof and amount thereof, and notified each personally and published notice of the said assessment according to the terms of the said by-laws and according to and in provision of Section 4737 of the Compiled Law of the State of Idaho, and that after due and legal publication of notice, as provided in Sections 4739 and 4741, this defendant offered for sale, in accordance with said Sections, all stock of this corporation upon which the assessments so levied and advertised had not been paid, and sold the same at public auction, and that no person offered to buy any of the stock and pay the delinquent assessments thereon, each of the delinquent stock certificates were at such sales purchased by the defendant company for the amount of said assessments; that a list of said delinquent stock so sold, together with the name of the holder, the number of the contract, and the date when sold, together with the amount

of money for which, under the rules of the company the stockholder might redeem so as to make his payments to the company correspond in amounts with others making such payments, is fully set out and herein attached, marked "Exhibit B," and this defendant asks that it may be made [fol. 116] a part of this answer as fully and completely as if set out at length herein.

XI

That by the rules of this defendant company, the owners of delinquent stock which has been sold for delinquent assessments are given the right and privilege to redeem said stock by the payment of the sum equal to the sum for which it was sold, plus the accruing assessments thereon, within a reasonable time, but none of the holders of the said stock so listed in schedule "B" have paid to this company any of the said assessments or charges as set out, and that the amount of the delinquency upon the said stock so unpaid to this company is the sum of $80,252.08; that among the said delinquency certificates so sold and unredeemed, are the shares of stock now claimed to be held by the plaintiffs and set out and described in their bill of complaint, and this defendant claims that by reason of the failure and refusal of the said stockholders and the said Portneuf-Marsh Valley Irrigation Company, Ltd., and these plaintiffs as pledged holders of the said stock to pay the assessments levied against the said stock, that the title to said stock, by reason of said sale, has passed to this defendant, together with a proportionate interest in the said irrigation system.

[fol. 117] XII

This defendant further claims and alleges that a sale of the said stock under any decree of this court would be a cloud upon the title of the said stock and would operate to discharge the purchasers of said stock from the obligation to pay a proportionate amount for the up keep, maintenance and improvement of the said canal and system in proportion to the stock actually issued and made appurtenant to land and assessible for said purpose.

XIII

This defendant further alleges that it has levied and collected assessments upon its present stockholders, relying upon the duty of the holders of the other stock to pay its proportionate amount of the burden of the up-keep, maintenance and improvement of said canal system in accordance with the terms of the contracts hereinbefore mentioned, and that it would be inequitable and work an unconscionable hardship upon this defendant company and its present stockholders to require them to bear the whole expense of the maintenance and up-keep of the said system and allow the holders or purchasers of the delinquent stock to be reinstated after the system has been seasoned, and been enlarged and kept up and maintained, without paying their just proportion of the cost thereof, and that until the plaintiffs pay to this defendant the delinquent assessments [fol. 118] or cause the same to be paid by the owners and holders of said stock, that it is estopped from the sale of the said delinquent stock or the interest it represents in the water rights of the said system.

XIV

This defendant further alleges that more than six months have elapsed since the sale of any of the stock of the defendant corporation, as set out in schedule A, and that no part of the same, nor the interest and costs of the sale as set out in schedule B, has been paid to this corporation; and that no action has been begun to invalidate the sale of the said stock or to recover the same or any part thereof, and this action so far as it applies to the recovery of any stock described in schedule A, is now barred by Section 4749 of the Compiled Statutes of the State of Idaho.

This answering defendant having answered the bill of complaint and set up its claim and interest in and to the property described in the said bill and exhibits thereunto attached, pray that the complainant take nothing thereby against this answering defendant, and that this defendant be adjudged to be the owner in its own right of the 5,495.2 shares of stock of the Portneuf Marsh Valley Canal Company, Ltd., listed and described by contract number in

Schedule A, hereunto attached, and its title quieted; and that it be further adjudged that the remaining shares outstanding of the said corporation, to wit; 6087.13 shares as [fol. 119] described in Schedule A, be adjudged to belong to the answering defendant, and its stockholders or the owners of stock heretofore issued by the said defendant corporation, and that their title thereto be quieted, and for all proper relief.

D. C. McDougall, I. E. McDougall, H. O. McDougall, Solicitors for the Defendant the Portneuf Marsh Valley Canal Company, Ltd.

(Duly verified.)

Schedule A to Answer

Shareholders Who Are Paying Their Maintenance

Name	No. of contract	No. of shares	Remarks
Robert Dill	111	80	
T. D. Wallace	6	80	
L. W. Woodin	98	40	
O. W. Bishop	109	52.68	
David Christensen	78	40	
C. D. McCormick	181	40	
F. L. Matoon	171	53.34	
A. A. Ballard	A 13	4.10	
P. W. Olson	163	40	
Emil Olson	28	40	
Garaah L. Jenkins	154	36.20	
S. D. Vincent	72	40	
S. O. Hamilton	62	80	
Fred L. Barnes	29	40	
W. J. Bybee	A 24	40	
Lorenzo Biggs	70	80	
Jerry Christiansen	A 6	40	
[fol. 120] M. V. Burton	A 26	1	
Gootfried Buttler	A 30		
J. H. Hartvigsen	75	40	
Harriot Riddle	1	80	
H. W. Wistner	64	40.34	

Name	No. of contract	No. of shares	Remarks
Charles Sheppard	122	42 12	
Joseph Murphy	13	80	
Joseph Murphy	10	80	
Thomas P. Bennett	71	80	
Moses Christensen	27	80	
W. I. Layton	36	80	
Hyrum Jensen	8	40	
N. J. Hartvigsen	76	40	
Arley Dewey	50	40	
John Dalge	153	40	
Leander Whitaker	A 20	39 97	
Charles W. Woody	159	40	
Fred L. Barnes	A 9	10	
William Laurenson	A 14	40	
Dan Ware			
H. H. Magaite	126	40	
C. A. Black	63	53 10	
George McAlpine	68		
Jesse G. Richards	100	40	
Jesse G. Richards	18	40	
Jesse G. Richards	102	40	
Jesse G. Richards	26	80	
Jesse G. Richards	107	40	
J. L. Hartvigsen	113	40	
Jesse G. Richards	204	5	
J. L. Hartvigsen	44	40	
Jesse G. Richards	205	5	
N. L. Nelson		80	
J. L. Hartvigsen	83	1	
Joseph A. Jensen	A 2	41	
George T. Hyde	A 5	60	
George T. Hyde	A 19	76 20	
S. F. Johnson	5	40	
[fol. 121] J. S. Hyde	15	40	
E. G. Widmann	53	80	
Joseph A. Stone	A 31	50	
T. W. Bennett	110	40	
Fred Benninger	56	80	
E. G. Widmann	99	40	
E. G. Widmann	43	40	
E. G. Widmann	47	40	

Name	No of contract	No of shares	Remarks
E. G. Widmann	46	40	
E. G. Widmann	49	40	
Geo. D. Maughn	A 7	40	
John Newbold	A 9	40	
Mose Christensen	88	40	
William Laurenson	A 57	40	
P. W. Olson	92	80	
P. W. Olson	93	80	
John Ware	12	80	
LeRoy Sheppard	A 4	60	
Marian Aller	A 4	20	
Ralph Bennett	136	40	
E. H. Welling	7	80	
John Bassil	19	80	
D. C. Olmstead	75	52 80	
E. E. Gilbert	94	5	
Neils O. Pehrson	100	40	
Dan Ware	112	40	
Otto Backman	9	80	
H. A. Pederson & Co	85	40	
C. J. Coffin	74	40	
G. A. Seivers	125	52 60	
C. Leader	138	40	
C. Leader	184	15	
E. Dolder	A 29	20	
Charles Webber	60	40	
M. A. Thomas	A 35	2	
[fol. 122] J. C. Tewell	79	52 80	
Guy E. Tripp	90	40	
Jesse G. Richards	25	80	
S. O. Hamilton	66½	40	
Andrew Newbold	A 38	40	
W. T. Morley	86	40	
T. D. Wallace		5	
C. Leader	2	80	
C. A. Royter	82	80	
A. L. Olson	87	40	
R. H. Christensen	174	40	
Joseph Simpson	103	40	
M. L. Johnson	A 17	42 60	
John S. Hyde	A 36	2	
L. C. Farr	178	40	

Name	No. of contract	No. of shares	Remarks
A. W. Farr	183	15	
L. C. Farr	182	21	
L. C. Farr	179	27 56	
Berry S. Crow	A-10	80	
Berry S. Crow	57	80	
Jerry Christansen	A-33	1	
M. V. Burton	A-41	40	
S. O. Hamilton	124	105	
Wm. I. Anderson	161	40	
John Anderson	140	40	
Ida Pauline Reisner	A-39	65	
Joseph A. Brim		10	
Robert Dill	137	53 40	
Harold E. Tripp	187	15	
Edward Denney	A-48	52 32	
Conrad Leader	189	10	
John Dyson	A-40	50	
Guy E. Tripp	190	10	
E. E. Gilbert	173	23	
Heber F. Johnson	44	20	
S. F. Johnson	A-42	1	
C. D. McCormick	192	15	
L. H. McCormick	183	15	
N. J. Hartvigsen	A-44	1	
[fol. 123] Arley Dewey	194	5	
Merrill & Richards	A-46	10 44	
Peter W. Olson	A-47	31 60	
L. H. McCormick	198	10	
John Layton		40	
C. Leader	P-9	10	
John F. Criddle	P-12	2 85	
Paul Garvin	169	10	
Lorin Criddle		25	
Maurice Simpson		65	
Jane Brown	200	40	
Jesse G. Richards	18	40	
J. L. Hartvigsen	A-33	1	
J. C. Hancock		40	
John H. Hurst	A-15	57 75	
Downey Village		120	
C. Leader	201	15	
		6,087 13	

Delinquent Stock Sold for Maintenance Bought by the Portneuf-Marsh Valley Canal Company. All Charges to Date

Name	No. of contract	No. of shares	Date sold	Amount
F. C. Knight	41	80	May 25, 1915	$923 67
Fred Muller	A-12	10	May 25, 1917	167 35
H. C. Taylor	45	80	May 25, 1917	1,343 44
Finley P. Sleeper	158	80	May 25, 1916	1,353 77
Emma Beckley	101	40	May 21, 1921	136 80
A. E. Doughenbaugh	54	40	May 24, 1919	1,126 75
D. W. Connie	165	80		1,359 95
Elizabeth H. Borhoe	155	80		1,269 95
O. A. Smith	11	80	Nov. 25, 1920	661 90
D. R. Taylor	135	40	May 24, 1919	379 45
F. C. Knight	4	80	May 24, 1919	843 67
Lottie L. Cobb	128	79 50	Dec. 7, 1918	1,100 00
John F. Widmann	77	40	May 25, 1917	572 29
John F. Widmann	89	40	May 24, 1917	572 29
C. N. Ray	34	80	Oct. 18, 1920	689 29
Antonet Treganza	38	40	May 24, 1919	527 03
Bery A. C. Norstrom	164	40		754 53
[fol. 125] C. F. Layton	33	80	Dec. 7, 1919	1,106 51
Robert Nelson	31	80		1,269 87
Wm. Astin	152	40		635 13

A. F. Daughenbaugh	120	80		1,189 95
Fred Benninger	134	40	May 24, 1919	257 30
A. F. Daughenbaugh	16	80	May 24, 1920	831 60
J. H. Byington	A-27	2	May 25, 1915	30 81
D. C. Cathcart	17	80	Dec. 7, 1918	1,120 35
Marion Aller	A- 4	20	Nov. 7, 1921	74 80
M. W. Aldridge	3	40	May 24, 1919	504 93
C. K. Hensman	59	23 35		78 99
W. H. Chester	91	40	Oct. 18, 1920	360 20
Otto Roundy	85	40	Nov. 7, 1921	191 63
John F. Widmann	95	78 74	May 25, 1917	1,322 32
Geo. W. Hobbs	180	40	May 25, 1919	467 76
Mary Zorbb	80	80	Nov. 7, 1921	406 27
Charles Woody	150	50		745 75
Wm. Webster	143	40		805 75
E. C. White	115	80	May 25, 1917	1,340 77
W. K. Walton	20	40	May 25, 1917	472 29
H. A. Weddle	108	40	May 25, 1917	697 44
[fol. 126] Vinnie R. Walling	42	40	Oct. 18, 1920	694 50
Harry M. Tibbitts	24	80	Oct. 18, 1920	694 50
Harry M. Tibbitts	14	80	Oct. 18, 1920	694 80
E. E. Gillispie	55	80		1,566 61
Sophia C. Roberts	65	40	Oct. 24, 1922	88 80
Charles O. Reynolds	119	81 04	May 24, 1920	1,527 04
S. D. Staves	97	40	May 24, 1920	403 70
Bert Chaney	175	40	Nov. 7, 1921	192 50

Name	No. of contract	No. of shares	Date sold	Amount
C. H. Overton	67	80		1,393 65
George A. Noxon	123	80	May 24, 1920	1,570 41
Elmer T. Richards	114	40	May 25, 1917	416 20
H. V. Monell	105	80	May 25, 1917	1,343 97
Fred Penninger	144	40	May 24, 1919	513 73
Joseph G. Morrison	168	40		791 77
Joseph C. Mock	145	40	Dec. 7, 1918	553 43
John H. Moyes	104	40		785 75
R. L. McDough	177	80		1,570 41
A. S. Moxhan	127	80	May 25, 1917	1,341 79
Mary Ethel Mock	21	80	Dec. 7, 1918	657 37
T. C. Lawler	53	80		1,570 41
Dwane E. Kent	35	80		1,570 41
[fol. 127] E. C. White	121	80	Dec. 7, 1918	1,106 07
Willard Kingsford	81	80	Oct. 18, 1920	694 40
L. W. Johnson	A-21	60	May 21, 1913	1,112 13
L. W. Johnson	116	40	May 25, 1915	722 20
R. L. Van Eaton	40	40	May 25, 1918	593 43
Oliver J. Hanchett	130	80	Dec. 7, 1918	1,106 37
J. C. Cathcart	37	80		1,369 95
E. D. Cathcart	30	80	Dec. 7, 1918	1,106 77
W. P. Hanover	A- 9	172 56	May 25, 1917	2,897 60
E. E. Gillespie	118	40		784 79

O. M. Engdahl	141	40		1,566 25
T. M. Edwards	A-160	160	May 24, 1919	1,934 82
D. W. Evans	20	80	Dec. 7, 1918	1,106 37
Anton K. Dahlen	32	40		745 75
Chester O. Christensen	A-21	30		559 62
H. E. Connie	162	40		785 75
Oliver Chambers	83	80		1,269 95
Everett Chambers	84	80		1,269 95
Thomas Coffin	146	40		785 75
H. V. Monell	119	80		1,269 95
Frank W. Blue	176	40		785 75
Oliver Chambers	58	11 5	May 25, 1917	190 94
[fol. 128] J. W. Alred	69	80		1,569 41
W. H. Chester	160	40	Nov. 25, 1919	462 23
Herman Anderson	169	79 76		1,560 40
L. A. Trowbridge	129	80	Dec. 7, 1918	1,106 37
Charles W. Blake	96	40	Oct. 24, 1922	88 80
Granite Realty Co.	96½	40	Oct. 24, 1922	90 80
J. J. Barnes		30	Oct. 18, 1920	261 59
John Clegg	P- 2	10	May 25, 1915	175 24
A. B. Perkins	P- 3	9 54	May 25, 1917	161 5[illegible]
Bird Clegg	P- 5	10	May 25, 1917	155 [illegible]
Martha Wise	P- 6	20	May 25, 1917	336 61
R. H. Palmer	P- 7	10 85	May 25, 1917	179 12
R. H. Palmer	P- 4	10	May 25, 1917	168 67
R. H. Palmer	P- 8	13 39	May 25, 1917	225 12
H. N. Tibbitts	P-10	10 43	Nov. 7, 1921	51 08

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Delinquent Stock Sold for Maintenance—Continued

Name	No of contract	No of shares	Date sold	Amount
Ferris & Pinkney	P-11	17 72	Dec. 7, 1918	225 93
Leo V. Johnson	P-14	11 54	May 25, 1916	200 90
William Thomas	P-12	2 66	Dec. 7, 1918	37 33
D. W. Evans	P- 1	11 07	May 25, 1917	186 55
Charles R. John	66	40		667 66
Geo. E. Eaton	172	40		745 80
		5,495 2		80,252 98

[File endorsement omitted.]

[fol. 129] In United States District Court

Reply to Counterclaim—Filed September 29, 1923

Comes now the complainants herein and for reply to any counterclaim, if any such there be, set up in defendant Portneuf-Marsh Valley Canal Company's answer to plaintiffs' bill of complaint, state as follows:

1 2 3

Admit the allegations of paragraph 1, 2 and 3 of the affirmative matter of said answer or counterclaim.

4

Deny that defendant Portneuf-Marsh Valley Irrigation Company, Limited, did not, in the construction of said irrigation system, comply with the State contract referred to in defendant's answer, but on the other hand allege the fact to be that said Irrigation Company constructed said irrigation works in accordance with the amended plans and specifications, agreed upon between said Company, the State Engineer of Idaho and the State Board of Land Commissioners of Idaho, and to the full and complete satisfaction of the said State Engineer and State Land Board, and that the canal system in connection with said irrigation works was sufficient to carry and deliver water to 14,000 acres.

Complaints further allege that on or about March 20, 1915, said defendant Portneuf-Marsh Valley Irrigation [fol. 130] Company, Limited, entered into an agreement in writing with said defendant Portneuf Marsh Valley Canal Company, Limited, whereby, for a valuable consideration, the latter Company, and its stockholders accepted and received said irrigation works as a full compliance, by the Irrigation Company, with the terms of the said State contract and as sufficient and adequate for the irrigation of 14,000 acres of land, and that said defendant Portneuf-Marsh Valley Canal Company, Limited, accordingly is and of right ought to be estopped from asserting that said canal system would carry and deliver water to only 8,000 acres of land, or any less amount than 14,000 acres.

5

Admit the allegations of paragraph 5 of the affirmative matter of said answer or counterclaim.

6

Admit the allegations of paragraph 6 of the affirmative matter of said answer or counterclaim and, in this connection allege that the by-laws of said defendant Portneuf-Marsh Valley Canal Company, Limited, have at all times also contained the following provision:

"Sec. 8. Shares Held Subject to Rights of the Portneuf-Marsh Valley Irrigation Company, Limited.—All shares in this corporation shall be held subject to the rights of Portneuf-Marsh Valley Irrigation Company, Limited, until [fol. 131] the amount due such Company, its successors or assigns shall have been fully and finally paid as provided in the contract between said corporation and the purchaser of shares and as provided in the contract between the said Portneuf-Marsh Valley Irrigation Company, Limited, and the State of Idaho."

7

Answering paragraph 7 of said answer and counterclaim allege that said defendant Portneuf Marsh Valley Irrigation Company, Limited, has caused to be issued stock of the defendant Portneuf-Marsh Valley Canal Company, Limited, to the amount of approximately 12,440 shares; admit that the original contracts for the sale of such water stock, among other things, contained the provision set forth at the end of paragraph 7 of plaintiff's said answer, but allege that in connection with the aforesaid agreement the Canal Company and the Irrigation Company, dated March 20, 1915, new form contracts were entered into with the individual settlers in which the said provision was eliminated, said new form contracts entirely superseding the respective original contracts with said settlers.

8

Deny that any of the matters referred to in paragraph 8 of the affirmative matter of defendant's answer or coun-

terclaim other than the said State Carey Act contract and the Articles of Incorporation of the defendant corporations were [fol. 132] matters of public record, and deny that prior to the time that the said deed of trust was delivered or any bonds sold under the provisions thereof, the said trustees or the purchasers of said bonds or either or any of them had actual or constructive notice of any of the contracts or agreements referred to in said defendant's answer other than said State contract, and deny that they or any of them knew that any contract or any of the certificates of stock of the defendant Canal Company were issued upon any agreement or understanding that they or any of them were subject or liable in any manner whatever for the payment of any tolls, charges or assessments whatsoever, or knew that any contracts, agreements, assignments of stock or by-laws were made, prepared or approved by the said Irrigation Company; or that these complainants or their predecessors in interest took the assignment of any of said water contracts or took the trust deed aforesaid subject to any rights or debts of the defendant Canal Company whatsoever.

9

Allege that said irrigation system was turned over to defendant Canal Company on or about April 1, 1913, instead of on or about April 1, 1915.

Complainants are without knowledge with respect to any assessments levied upon the stock of said defendant Canal Company or as to what stockholders have paid and what stockholders have not paid such assessments or as to the [fol. 133] total amount of such assessments levied or collected, or as to the amount expended by defendant Canal Company in the maintenance, up-keep and improvement of said canal system of the distribution of water therefrom and, therefore, complainants deny each and every allegation respecting said matters and require proof thereof.

10

Complainants are without knowledge with respect to any assessments levied by defendant Canal Company against the shares of stock of the Company or as to any notice or notices thereof given either personally or by publication

to said stockholders, or with respect to any sale or sales of any of said stock or the purchase thereof by said defendant Canal Company, therefore, complainants deny each and every of the allegations of paragraph 10 of defendant Canal Company's answer with respect to said matters and require that said defendant Canal Company make strict proof of each and every of said allegations.

And in this connection complainants allege that each and every of the certificates of stock issued by said defendant Canal Company contain, printed across the face thereof, the words "full paid and nonassessible."

[fol. 134] Complainants further allege with respect to said defendant Canal Company that on the 2nd day of December, 1918, for failure to comply with the law of the State of Idaho, relating to corporations, said defendant Canal Company, by proclamation of the Governor of Idaho, forfeited its charter and right to do business, whereby and whereupon said corporation became and remained a defunct corporation until the 14th day of September, 1921, at which time said corporation filed its annual statement in the office of the Secretary of State of Idaho and received a certificate of reinstatement, which was thereafter filed in the office of the Recorder of Bannock County, Idaho, and thereby became and ever since has continued to be a duly existing corporation.

Complainants further allege that each and every of the pretended assessments levied by said defendant Canal Company on its stockholders and its stock was in excess of ten per cent. of the amount of the capital stock named in the Articles of Incorporation of said defendant Canal Company. That by reason of the foregoing matters each and every pretended assessment attempted to be levied and collected by said defendant Canal Company on its capital stock and all proceedings for the collection and enforcement thereof and each and every pretended sale of such stock is and has been wholly void and without effect.

[fol. 135] 11

Complainants are without knowledge respecting the rules of defendant Canal Company relating to the redemption of stock sold for delinquent assessments or with respect to the payment or nonpayment by the holders of any of said

stock listed in schedule "B" attached to defendant's answer of any assessments or charges on any of said stock or with respect to the amount of the delinquency on said stock or any part thereof and, therefore, denies each and every of the allegations of defendant's answer with respect to said matters and require strict proof thereof.

Admit that among the certificates set out in said exhibit "B" are certain of the shares of stock now claimed to be held by these complainants and set out and described in their bill of complaint, but deny that any said certificates have been legally sold or are unredeemed.

Deny that by reason of any failure or refusal of any one whosoever to pay any assessments or pretended assessments levied against said stock, or that by reason of any sale thereof, the title to said stock or any part thereof together with a proportionate interest in the said irrigation system has passed to defendant Canal Company.

[fol. 136]

12

Admit that the sale of the said stock under decree of this Court, in order to satisfy complainants claim, would be a cloud upon the title of said stock so far as any claim thereon by defendant Canal Company is concerned, but deny that such sale would operate to discharge the purchasers of said stock from the obligation to pay a proportionate amount for the up-keep, maintenance and improvement of the said irrigation system.

13

Complainants are without knowledge upon the subject and therefore deny that the defendant Canal Company has levied or collected assessments upon its present stockholders relying upon the duty of the holders of any other stock to pay their proportionate amount of the burden of the up-keep, maintenance and improvement of said canal system in accordance with the terms of the contracts hereinbefore mentioned or otherwise or at all; deny that it would be inequitable or work a hardship upon defendant Canal Company or its present stockholders to require them to bear the whole expense of the maintenance and up-keep of the said system; admits that it would be inequitable to allow

the holders or purchasers of delinquent stock, if any there be, to be reinstated without paying their just proportion of the cost thereof. Deny that until these complainants pay, or cause to be paid, to defendant Canal Company any [fol. 137] delinquent assessments upon said stock, it is estopped from the sale thereof or any interest it represents in the water rights of the said system.

Complainants admit that any assessments duly and legally levied by defendant Canal Company on its stock is a lien and charge upon any interest of the purchasers of said stock, but deny that any such lien is of any force or effect to deprive the defendant Portneuf-Marsh Valley Irrigation Company, Ltd., or these complainants, as their successors and assigns, of the lien for the purchase price of said stock which represents the actual construction cost of said canal system.

14

Complainants are without knowledge on the subject and therefore deny that more than six months have elapsed since the sale of any of the stock of defendant corporation, or that no part of the same nor the interest or costs of the sale, as set out in schedule "B" attached to defendant Canal Company's answer, has been paid to it or that no action has been begun to invalidate the sale of said stock or to recover the same or any part thereof. Admit that these complainants have not paid said assessments or costs of sale or any part thereof and that they or no one in their behalf have brought any action against said defendant Canal Company to invalidate the sale of said stock or to [fol. 138] recover the same or any part thereof. Deny that this action is barred by Section 4749 of the Compiled Statutes of Idaho.

Further replying to the affirmative matter of defendant Canal Company's answer or counterclaim these complainants allege:

(1) That the pretended assessment proceedings of defendant Canal Company culminating in the pretended sales of a large part of the stock set out in exhibit "B" attached to defendant's answer have occurred subsequent to the cancellation by the State of Idaho of the respective Carey

Act entries to which said water stock was dedicated and made appurtenant by the respective water purchase contracts and therefore after said stock reverted to Portneuf-Marsh Valley Canal Company, Ltd., and these complainants as its successors and assigns, and after said water stock had ceased to be appurtenant to any land and after it was held by said defendant Irrigation Company and these complainants in precisely the same way as before it was sold and made appurtenant to land; allege also with respect to a considerable other part of such stock that such proceedings occurred subsequent to the foreclosure by these complainants of the lien for the purchase price of such stock and after it was held by said defendant Irrigation Company and these complainants in precisely [fol. 139] the same way as before it was sold and made appurtenant to the land.

Wherefore these complainants having replied, pray that said defendant Canal Company take nothing by reason of its answer or any counterclaim set up therein and that complainants' lien upon the property described in their bill of complaint on file herein be decreed to be prior to any lien or claim of defendant Portneuf-Marsh Valley Canal Company, Ltd., upon said property or any part thereof.

Edwin Snow, Solicitor for Complainants.

(Duly verified.)

[File endorsement omitted.]

In United States District Court

Statement of Evidence—Filed October 9, 1924

C. M. Brewer, a witness duly called and sworn on behalf of plaintiffs, testified as follows:

I am a bank clerk connected with the Kidder-Peabody Company of Boston. I am acquainted with Brown and [fol. 140] Chapin, trustees, plaintiffs in this action. In many things, I have been acting as agent for the trustees in the administration of their trust.

Plaintiffs' Exhibit "A" (offered and received in evidence) is the original trust deed of the Portneuf-Marsh Valley Irrigation Company to the Colonial Trust & Savings Bank and L. C. Rose, trustees, dated July 1, 1909, and recorded November 27, 1909.
November 27, 1909.

Plaintiffs' Exhibit "B" (offered and received in evidence) is a list of the bonds of the Portneuf-Marsh Valley Irrigation Company which I sent out here amounting to $204,500.00.

Plaintiffs' Exhibit "B-1" (offered and received in evidence) is one of the bonds. The other bonds comprising the $204,500.00 are in the same form.

Plaintiffs' Exhibit "B" (offered and received in evidence) is a list of the $204,500.00 of bonds of which plaintiffs' Exhibit "B-1" is a sample, the others being identical. They are all $500.00 bonds. Kidder-Peabody & Company holds the bonds at the present time. These are the bonds secured by the terms of the trust deed that has been introduced in evidence. There are $212,500 bonds outstanding. —$204,500.00 here in court. The remaining $8,000.00 of bonds are outstanding, and in the hands of unknown owners. I have been trying to find them but cannot do it. All the bonds were issued sometime prior to March, 1911 and [fol. 141] subsequent to July, 1909.

The trust deed provides that there should be deposited by the Company with the trustees, water contracts, accompanied by shares of water stock, in an amount in face value equal to one and one-half times the amount of the bonds outstanding. From time to time water contracts with shares of stock attached were deposited in accordance with that provision.

Plaintiffs' Exhibit "C" (offered and received in evidence) is a list of the water contracts deposited and now on deposit with the trustee, in accordance with the terms of the trust deed. Plaintiffs' Exhibit "C-1" is one of the original form water contracts with the attached certificate of stock which the contract covers. That is one of the water contracts deposited as collateral. There was an old form of contract and a new form of contract in use by the company. Plaintiffs' Exhibit "C-1" (offered and received in evidence) is one of the so-called old forms of contract.

It was the original form of water contract used by the Company up to the time that the irrigation project was turned over to the settlers.

Plaintiffs' Exhibit "C-2" (offered and received in evidence) is one of the Portneuf-Marsh Valley Irrigation Company's new form water contract with the requisite [fol. 142] certificate of stock attached. Contracts on deposit with the trustee are both of the old form and of the new form. There are some new form contracts and some old form contracts. The new form contracts are identical with each other except with respect to the name of the person and the amount payable, etc. Plaintiffs' Exhibit "C-1" and "C-2" is a sample, respectively, of the old form contract and the new form contract.

No part of the principal has been paid on the $212,500.00 bonds outstanding. The interest has been paid on these bonds up to and including July, 1914. January 1, 1915 and subsequent coupons were defaulted. The amount now due, owing and unpaid, secured by the trust deed and the collateral water contracts is $212,500.00, with interest at 6% from July 1, 1914.

Certain of the water contracts originally deposited as collateral with the trust deed have been paid off, but very few. They are not included in the list of contracts introduced in evidence. In these cases, releases have been given and they have been discharged, and the shares of stock purchased under the terms of the water contract were surrendered to the respective purchasers.

From time to time proceedings have been taken by the trustees to foreclose the liens of some of the water contracts.

[fol. 143] Plaintiffs' Exhibit "D" (offered and received in evidence is a list of sheriffs' deeds from the sheriff of Bannock County, Idaho to the trustees, Brown & Chapin, by virtue of certain foreclosure proceedings and public sales. Those deeds represent the consummation of proceedings for the foreclosure of various of the water contracts that have been deposited with the Trustees.

Plaintiffs' Exhibit "D-1" (offered and received in evidence) is a Sheriff's Deed on foreclosure on one of these water contracts. The other Sheriffs Deeds obtained have been of like form and effect as Plaintiffs' Exhibit "D-1"

except as to the description of the property, and the names of parties and matters of that sort. The list, Plaintiff's Exhibit "D" is a correct list of the Sheriffs Deeds that have been obtained by the trustees on that foreclosure proceeding. The trustees have in their possession deeds of similar form and effect to Plaintiffs' Exhibit "D-1."

It was here stipulated between the parties to the action that the Defendant Portneuf-Marsh Valley Canal Company was not made a party to any of these suits for the foreclosure of the lien of any of the water contracts which resulted in the Sheriffs Deeds and that any rights the said defendant Portneuf-Marsh Valley Canal Company might have are unaffected by the foreclosure in the State Courts of any of these individual water contracts.)

[fol. 144] Plaintiffs' Exhibit "E" (offered and received in evidence) is a list of quitclaim deeds from certain individuals who contracted to purchase water rights from the Portneuf-Marsh Valley Irrigation Company for the land described in the quitclaim deed (the water contract being part of those deposited as collateral with the trustees, and which quitclaim deeds were executed and delivered by such contracting parties to W. Rodman Peabody as Agent for Brown and Chapin, trustees, for the purpose of avoiding foreclosure proceedings under the water contracts). Plaintiffs' Exhibit "E" is a correct list of quitclaim deeds that have been obtained by the trustees under the circumstances above recited.

Plaintiffs' Exhibit "E-1" (offered and received in evidence) is one of the quitclaim deeds shown on the list. The others shown on the list are in form and effect, and with respect to the circumstances under which they were obtained, indentical with plaintiffs' Exhibit "E-1".

W. Rodman Peabody is Attorney and Counselor for Kidder-Peabody & Company and for the trustees. The deeds were merely placed in his name for convenience. Mr. Peabody had no individual interest in these deeds. Brown and Chapin trustees are the owners of the property described in the quitclaim deeds. The Quitclaim deeds were taken during the progress of foreclosure proceedings or to avoid foreclosure proceedings upon the water contracts [fol. 145] evidencing the sale of water rights for the lands described in the deeds.

(Here Plaintiffs' Exhibits "F" and "G" were identified and introduced in evidence, being documents showing that the plaintiffs here have by appointment and acceptance of the trust succeeded to all the rights under the trust deed of Colonial Trust & Savings Bank and L. C. Rose who had resigned as such trustees, the plaintiffs being their successors. These exhibits are omitted from the printed record for the reason that no controversy is made respecting them.)

In the course of my connection with the bond department of the Kidder-Peabody Company, I have become familiar with the services performed by trustees under deeds of trust, and in general familiar with the amount customarily charged, and the reasonable value of services of trustees upon similar deeds of trust. I should think the sum of $1,000.00 a year would be the reasonable value of the services performed by the trustees under the trust deed here involved. The Trustees have also expended in the neighborhood of $7,500.00 to $10,000.00 for expenses—in part legal expenses. It was necessary for the trustees to employ counsel in connection with the foreclosure of the individual water contracts and also in connection with preparation of releases, etc. Advice of counsel was also necessary. No [fol. 146] money came into the hands of the trustees as a result of the foreclosure sales and contracts. In each case the trustees or attorney for the trustees bid in the property.

Cross-examination:

The certificates of stock of the Portneuf-Marsh Valley Canal Company, described in the lists that have been introduced, have been during the time that I have been connected with the Trustees kept in the vaults of Kidder-Peabody & Company, assessable to the trustees and myself.

These certificates are all the stock certificates of the Portneuf-Marsh Valley Canal Company that the Trustees are now asking to foreclose as a pledge in connection with this trust deed. I have had possession of these certificates since 1917, the date of appointment of Brown and Chapin as trustees. Prior to that time they were with the Chicago Title & Trust Company while the latter was acting as trustees and after it had succeeded the Colonial Trust & Savings Bank. I have acted for the trustees, Brown & Chapin,

as a matter of convenience. Chapin's desk is next to mine and being more familiar with the proceedings out west it is quite natural that I should. The real custody, however, was naturally with him. I have at the same time in this transaction represented the Kidder-Peabody Company in the handling of the business end of the irrigation project. [fol. 147] I have frequently visited the tract and conferred with the directors of the Canal Company during that period. During part of that time, that is, during 1917 and 1918, the Canal was being operated very poorly, as the canal laterals were frequently allowed to silt almost even to the top of the banks, and the banks were filled with moss. Beginning with 1919 there was a decided improvement; 1920 was an improvement over that, and 1921 and 1922, as far as I know, has been very good. I do not know what it has been this year. I have no official knowledge of how the money was being raised to maintain the canal during this time. My general inference is that it was by assessment for maintenance. I do not know, but I would say that you are correct in the statement that during that period assessments for maintenance was the only source of income upon which maintenance could be paid. I do not know how many shares of stock there were in the vault in Boston. It shows on the list introduced in evidence. If 6,000 shares is the total of that list, then it was that amount. During the time the trustees had those shares in their possession as pledgees no maintenance charges have been paid upon them by the trustees. I presume that maintenance charges have been paid by the different owners of the different tracts of land, but I have no knowledge of that. I have no personal knowledge of any maintenance charges being made on those tracts upon which title was secured by foreclosure proceed- [fol. 148] ings. After the foreclosure sales and conveyance to Mr. Peabody of those certificates on Sheriff's sales were foreclosed, the stock, so far as I know were lodged with the deed and nothing has been done. I do not know what the proceedings are. It was left in the hands of the lawyers, and I do not know the technical twists.

During the period that I have been acting as Agent for the Kidder-Peabody Company, I have never been requested to pay the assessments for maintenance on this Tract. I assumed the regular routine assessments were made and

the publication going on. I knew the assessments were not paid so far as my company was concerned. I do not know for what sum the stock was originally sold, as it probably sold at different figures according to the different tracts of land covering it. I do not know whether at the time of the opening of the land to entry that the original sales here were fixed and sold at $35.00 a share. I didn't come into the picture until 1911 and had nothing to do with it.

Mr. McDougall: May we have the admission that the stock originally sold for $35.00 per share?

Mr. Snow: You may. $3.00 an acre was the amount paid in cash by the entryman, and the balance in deferred payments—The original contract calling for the balance to be [fol. 149] paid in ten equal installments, with interest at six per cent.

Mr. McDougall: It is agreed that all of the stock of the canal company which is the subject of this litigation, or which was in the hands of the trustees, had been by the Portneuf-Marsh Valley Irrigation Company sold under contract to the various landowners under the project, and the water rights, or the stock made appurtenant to the several tracts of land described in the contract at the time of the sale.

Mr. Snow: That is correct.

The Court: The present status of this stock is that some of it has been acquired by the trustees through foreclosure proceedings and they hold title to it—foreclosure against the individual land owners—and other stock has been purchased by the trustees by means of quitclaim deeds in order to avoid foreclosure.

Mr. Snow: They simply accepted the quitclaim deeds in lieu of foreclosure proceedings.

The Court: Title of the original purchaser was transferred to the trustees by means of a quitclaim deed.

Mr. Snow: In satisfaction of the lien.

The Court: And the balance of the stock is still held as a pledge under the trust. In other words, it is in the same [fol. 150] condition now as it was when first delivered to the trustees. It is held as security together with the water contracts, and is really a part of the water contract.

Mr. Snow: That is correct.

The Court: The title to that stock being still in the individual settler, and the trustees holding merely as collateral.

Mr. McDougall: I will say that as far as the Canal Company is concerned, I understand there has been no transfer of that stock made upon the books of the Canal Company. It all stands still in the name of the original purchaser.

The Court: Is that agreed to. I do not know that it is material. Is it agreed to.

Mr. Snow: That is agreed to.

The Court: That the books of the canal company show that all of this stock stands in the name of the several settlers—original purchasers?

Mr. Snow: Also it may be agreed that I have been advised that you claimed this maintenance lien, and that the water stock could not be transferred until the maintenance was paid or adjusted.

Mr. McDougall: I think you understood that for several years.

The Court: I didn't hear you?

[fol. 151] Mr. McDougall: That has been understood for several years, although no request has been made to the Company for a transfer.

Mr. Snow: That is correct. We have discussed it frequently, and you have stated your position that no transfer would be permitted until this maintenance was paid.

(Witness resumes testimony:) In regard to the quitclaim deeds, it was understood that we would pay the settlers a consideration of $25.00 in each case. We cancelled their obligation and gave them $25.00 in money for their quitclaim. Mr. Chapin was one of the clerks of the Kidder-Peabody Company, and occupied a desk beside mine. Brown is a member of the firm, Peabody, Brown, McCauley and Storey, and is associated with W. Rodman Peabody, president of the irrigation company. It was necessary to foreclose 24 or 25 water contracts which have resulted in the issuance of Sheriff's deeds. We thought it was necessary, and the cheapest way to do it. I know that the quitclaim deeds that have been obtained were the result of either foreclosure proceedings that were in progress at the time, or foreclosure proceedings that were about to be begun. We considered it necessary in the protection of these securities. As to the $25.00 for the quitclaim deeds,

we came to the decision that it was quicker and cheaper to [fol. 152] do it that way than through the regular Sheriff's proceedings. In some cases they were the result of foreclosure already begun and in regard to which the trustee had engaged counsel.

The Court: That is the status of the property thus acquired. When you foreclosed upon one of these contracts, Mr. Brewer, there was a sale, as I understand, and invariably the trustee bought it in?

A. It was always bought in by the trustee in case of foreclosure sale.

The Court: What was the customary bid—the full amount of the decree?

A. I shall have to ask Mr. Snow. That was left entirely with him.

The Court: I do not know that that is very important. I assumed that counsel fees were allowed?

Mr. Snow: Counsel fees were allowed.

The Court: And the property was bought in for the amount of the decree, including costs and attorney's fee?

Mr. Snow: That is correct.

The Court: The trustees have that property?

[fol. 153] Mr. Snow: I think that the whole property is in pledge, as a substituted pledge, that is, in the same situation exactly, as the original stockholder. The real owner of the property is the Portneuf-Marsh Valley Irrigation Company, subject to the lien that the trustees have as security for the bonds issued.

J. H. Peterson, duly called and sworn as a witness on behalf of plaintiffs, testified as follows:

I am an attorney at law, practicing at Pocatello, Idaho, and have been practicing for twenty years. I would say that the sum of $7,000.00 to $10,000.00 would be a reasonable fee to be allowed plaintiffs' counsel in the present foreclosure suit. I have had considerable experience in Carey Act matters. I was Attorney General of Idaho for four years, and assistant with Mr. Snow for two years and under General McDougall four years.

W. Rodman Peabody, a witness duly called and sworn on behalf of plaintiffs, testified as follows:

I reside at Boston, Massachusetts. I have been counsel for the Portneuf-Marsh Valley Irrigation Company a good many years and then because I have come out here I was asked to be treasurer. I became more familiar with the affairs out here, and it was thought better that I should hold an executive position. My real association with them [fol. 154] had been as their counsel. I have been their most active representative next to Mr. Brewer. Since July, 1914 no payment has been made on either interest or principal on the outstanding bonds. There is not at the present time any money in the hands of the trustees applicable to the payment of any part of interest or principal. During past years I have been secretary of the Portneuf-Marsh Valley Irrigation Company.

Cross-examination:

During the time that I have been connected with this company since 1914 a small proportion of the settlers have paid up their contracts in full. There are now settlers on only about 5,000 acres on the tract. A part of them have made payments according to their contracts and have been doing so right along, and a part of them have not. The money comes to me as treasurer of the Portneuf-Marsh Valley Irrigation District through Kimball & Richards, Agents, but it is paid to the trustees, Brown & Chapin.

Testimony on Behalf of Defendant Portneuf-Marsh Valley Canal Company, Limited

Moses Christensen, a witness called on behalf of defendant Portneuf-Marsh Valley Canal Company, Limited, being [fol. 155] duly sworn, testified as follows:

I live at Downey, Idaho. I am a member of the Portneuf-Marsh Valley Canal Company. I have been a stockholder in that company since 1912. The Portneuf-Marsh Valley Canal Company took over the operation of the Portneuf-Marsh Valley Irrigation Company's ditch in 1915.

Q. At that time, what would you say as to the ability of the company to deliver water to the land watered through that canal.

Mr. Snow: At what time?

Mr. McDougall: In 1915, when the canal was taken over. This is leading up to show that the canal did not deliver water. There were large losses, and it was necessary to levy assessments to keep up and to maintain the canal. If that is admitted, further examination might be unnecessary.

Mr. Snow: I think it may be admitted that the assessments as levied were not excessive, but reasonably necessary in the operation and maintenance and improvement of the canal system.

Mr. McDougall:

Q. Are you familiar with the ——

Mr. Snow: Further that the money so raised was used for the reasonable and necessary expenses of the com-[fol. 156] pany in the operation and management of the irrigation ditch.

Mr. McDougall: That will be all for this witness.

J. W. Christensen, a witness called on behalf of the Portneuf-Marsh Valley Canal Company, being first duly sworn, testified as follows:

I live at Downey, Idaho. I am Secretary-Treasurer of the Portneuf-Marsh Valley Canal Company. I have acted in that capacity since 1920. I have the record of the minute book of the company prior to that time.

(Defendants' Exhibit No. 1 marked for identification).

Mr. McDougall: I have here a copy of the minutes of the board of trustees with reference to the levy of assessments in 1915, and the affidavit of the printer as to the publication of notice of assessment, and notice of sale of delinquent stock. I should like to offer them in evidence as defendants' exhibit No. 1.

(Defendants' Exhibit No. 1 admitted.)

(Defendants' Exhibits Nos. 2 to 15, inclusive, marked for identification.)

(Witness resuming testimony:) These are copies from the minute book, showing the date and action of the board [fol. 157] in levying assessments, and attached to that is a copy of the printed notice of sale, and notice of sale of delinquent stock, printer's affidavit. These are the minutes taken from the original book, and are correct so far as I know. There may be some typographical errors.

Mr. McDougall: Before offering them, Mr. Snow suggests that he be permitted to examine them at some length.

The Court: They may go in subject to correction.

Mr. Snow: I can't at this time make an intelligent objection to their introduction. It depends upon the dates and so forth, and I would like to have an opportunity to examine them.

The Court: All right.

Mr. McDougall: I notice the printer in one or two of these has misplaced the notices. The printer seems to have attached notice of sale of some other stock, and not this, and Mr. Snow states we may supply these.

(Witness resumed:) I have a record of the sale of stock made under these various notices. They have been taken from my books, and show the stock number, and show the name of the original purchaser.

[fol. 158] (Defendants' Exhibit 16 Marked for identification.)

Defendants' Exhibit 16 is a true list of the sales made each year qualifications generally that that is a list of those that never came back in. That is a list of those that remained delinquent. There were a great many more sales made. We have a rule allowing a delinquent stockholder to redeem. Providing the stockholder goes delinquent and doesn't pay until after the sale a penalty of 20% is added, and if he does come in for the assessment that has been levied during the time that he was delinquent, in addition to the 20% on the original bill he pays 7% interest on the amount he hasn't paid. On the payment of those sums his

stock is returned to good standing. The stock is sold for the amount of the assessment plus charges—costs of sale. If the delinquent stockholder should come in a few days later, he could redeem by paying the assessment plus his proportionate part of the sale and 20% added. If he does that at any time thereafter, in addition to this he pays any subsequent assessment and interest thereon at 7%. We compute the interest from the date of the sale, and that takes into consideration interest on each one of the assessments when it was levied. The interest starts in on that from the time that it was levied until it was paid. I have compiled from my books the amount of revenue that I have received from these assessments for the 7 [fol. 159] years since 1915. I have compared my books with the schedule A. which is the delinquent stock held for maintenance and bought by the Portneuf-Marsh Valley Irrigation Company. Those lists are attached to the answer and marked A. and B., Schedule A. being the delinquent stock sold for maintenance, with the number of the contracts, number of shares, the dates sold and the amount now due, are correct copies from the books; so far as I know they are correct, unless there are some typographical errors. They are correct copies of the amounts due on each of the contracts, number of the contract, and the name of the contract and the name of the party that bought under the contract, according to our books. In several instances there have been transfers by the original purchasers from one stockholder to another and it was noted on the books of the Company—each subsequent purchaser was noted there. The list gives subsequent purchasers only. The only thing continued of the original contract is the number. We continue to carry the same number; that is, the number of the original contract. Referring to Schedule B. attached to the answer of this defendant, I will state that that is a true list as shown upon my books of the present stockholders of the company, who are owners of stock that have continued to pay the maintenance charges rendered against them. The total amount that has been col- [fol. 160] lected by assessment since 1915 is approximately $163,000.00. It is pretty hard to answer concerning approximately how many shares of stock this has been collected upon. It is difficult on account of the fact that dur-

ing the beginning of the project in 1915 and so on more of them were paying at that time, and as the books show, they fell out through failure to deliver, insufficient water delivery, until 1917 and 1918, many of them fell out, and the stock was sold at Public auction and purchased by the Canal Company. At the present time, there is about 6,000 shares of stock paying maintenance but not all receiving water. A little less than 5,500 shares have been sold and purchased by the Canal Company in the manner I have described. I would like to make one correction before cross examination. I made the statement that approximately $160,000.00 had been collected from assessments. That figure included an amount that was paid by the irrigation Company to the Canal Company for completion of the system. I want to make that correction. It was not all collected by maintenance. About $31,000.00 was turned over to the Canal Company by the Irrigation Company and was disbursed through the receiver, and $130,000.00 was collected by these assessments.

[fol. 161] Cross-examination:

So far as I know, all the remaining money other than the $31,000.00 was collected by assessments. I base this on the amount of the assessment as levied and the charges against all of them and the total amount that the books show that these charges make in that length of time. According to the books there have been approximately $131,000.00 in maintenance collected and disbursed. The disbursements show that much. The collections show that much. That includes 1915 to 1922, inclusive, up to sometime the first of January, 1923, and may include the first assessment for 1923, but I am not certain about that. Assessments have been larger in some years than in others.

(Defendants' Exhibit No. 17, being the contract between the State of Idaho, through the State Land Board, and H. O. Harkness, et al., admitted in evidence).

(Defendants' Exhibit No. 18, being the Articles of Incorporation of the Portneuf-Marsh Valley Irrigation Company, admitted in evidence.)

(Defendants' Exhibit 19, being certified copy of the Articles of Incorporation of the Portneuf-Marsh Valley Canal Company admitted in evidence.)

It was here stipulated that the Articles of Incorporation [fol. 162] of the Portneuf-Marsh Valley Canal Company were prepared by the Portneuf-Marsh Valley Irrigation Company and adopted while the Portneuf-Marsh Valley Irrigation Company owned all of the stock of the Portneuf-Marsh Valley Canal Company, and such Articles of Incorporation were approved by Mr. McDougall as Attorney General.

It was further here stipulated that the by-laws of the Portneuf-Marsh Valley Canal Company were prepared by the Portneuf-Marsh Valley Irrigation Company and adopted while the Portneuf-Marsh Valley Irrigation Company owned all of the stock of the Portneuf-Marsh Valley Canal Company.

It was further stipulated that the copy of the State contract introduced in evidence was a duplicate of the original copy which was kept in the custody of the Register of the State Land Board, and that such officer was the proper custodian, and has been ever since and now is.

It was further stipulated that defendants' exhibits Nos. 18 and 19, being respectively the Articles of Incorporation of the Portneuf-Marsh Valley Irrigation Company and the Portneuf-Marsh Valley Canal Company, were recorded in the office of the County recorder of Bannock County, and copy of them filed in the office of the Secretary of State at Boise, Idaho, the date of recording of the articles of the canal company being September 7, 1908.

It was further stipulated that the date of the opening of [fol. 163] the Carey Act land to entry was within a day or two of September 7, 1908, and at this date the water contracts generally were signed. That is to say that a large number of water contracts, approximately 10,000 acres of the original so called old form of water contracts were entered into, and that this all took place prior to the execution and delivery of the trust deed.

(Witness resumed testimony:) My company lapsed for non-payment of license and was declared set aside by the Secretary of State. I forget the exact date when my company first learned that such action had been taken. The Secretary of State sent us a new certificate of restoration. A resolution was passed by the Board making mention of this.

Mr. McDougall: We offer that minute, and ask that it be read into the record.

Mr. Snow: We object to that as incompetent, and immaterial.

The Court: Overruled.

Mr. McDougall (reading): Minutes of the board of directors of the Portneuf-Marsh Valley Canal Company. At a meeting held September 29, 1921, all members of the Portneuf-Marsh Valley Canal Company being present, the charter from the State of Idaho, reinstating the Company [fol. 164] was read by the Secretary, and the following resolution was passed unanimously by the board:

"Whereas, this board has just learned that the charter of this corporation was forfeited in 1918, due to the failure to file the necessary report with the Secretary of State.

"And whereas, this board, through its officers has filed the necessary report, and received from the Secretary of State, a certified of reinstatement, and said corporation is now in good standing;

"Now therefore, this board hereby ratifies, affirms, accepts and adopts all of the proceedings, and all of the acts heretofore done in the name of the said corporation, by its board of directors, or lawful officers, since the date of forfeiture of the said charter to the date hereof."

Minutes signed by J. W. Christiensen, secretary, and E. W. Olsen, president.

Mr. Snow: What is the date of that?

Mr. McDougall: September 29th, 1921.

Mr. McDougall: I now offer in evidence defendants' exhibits Nos. 1 to 15, being the records and publication of the sale of stock.

Mr. Snow: May it be admitted that each one of the assessments referred to in these exhibits was in excess of [fol. 165] ten per cent of the amount named in the articles of incorporation of the defendant Portneuf-Marsh Valley Canal Company?

Mr. McDougall: Yes. And at the same time, I will ask for the admission that it was not in excess of ten per cent of the actual sale value of the shares of stock, which has been admitted to be $35.00 per share.

Mr. Snow: I think that may be admitted.

Mr. Snow: We object to the admission of defendants' exhibit No. 1, which relates to an assessment, which, according to the proceedings, purports to have been levied upon the 23d day of February, upon the grounds:

First. It does not appear that any such assessment was levied;

Second. On the ground that any such assessment as was levied was invalid for the reason that the shares of stock upon which said assessment was levied is invalid, as a statutory assessment, that is to say, uninforcible under the statute of Idaho for the sale of stock, on the ground that the shares of capital stock on which the assessment was levied had printed on their face: "Fully paid and non-assessable."

Third. That the assessment was invalid, and therefore affords no basis in support of the defendant Canal Com-[fol. 166] pany's claim, on the ground that the said assessment was admittedly in excess of ten per cent of the amount named in the articles of incorporation, and is therefore contrary to the statutes of the state of Idaho, so far as it relates to a statutory assessment, enforcible by the sale of corporation stock.

The Court: The first objection is based upon the statement that no assessment was made. I haven't checked these records that have been introduced. Doesn't the record show that such assessment was made?

Mr. McDougall: Not for this particular transaction. It appears to be a sale shortly after the project was turned over to the company, and we have been unable to find any minutes of the meeting at the time it recites that the assessment was levied. But this is the notice of sale and notice of delinquency—the notice of assessment and the sale of delinquent stock, and it is the first record that we have in our books that we are able to find. We offer them for what they are worth. And our records show, and a number of the exhibits show, the amount that was sold under that notice.

The Court: The record shows the amount claimed by assessment?

Mr. McDougall: Yes. It shows the amount so claimed, when due, and to whom payable.

[fol. 167] The Court: I will overrule the objection pro-forma, and I will hear you later. There will be other objections to some other questions involved, I suppose, which will come up later on.

Mr. Snow: Plaintiff objects to defendants' exhibit No. 2 on the ground that the form of stock upon which the levy was made, has printed on them, "Fully paid and non-assessable;" and secondly, that such assessment is admittedly in excess of ten per cent as named in the articles of incorporation.

The Court: Is it conceded that the plaintiffs here have never tendered or offered to pay any portion of the assessment?

Mr. Snow: It is conceded that neither the plaintiffs, or anybody in their behalf, have ever tendered any payment on the amount of the assessment.

The Court: Overruled.

Mr. Snow: Third that the assessment was not levied in the manner provided by the statutes of Idaho for an assessment to be enforcible through the sale of corporation stock, in that it didn't fix the statutory period in accordance with the statute, following the date of the assessment, within which the assessment became delinquent, and the period following the date of deliquency, within which the stock might be sold.

[fol. 168] The Court: Overruled.

Mr. Snow: We object to the introduction in evidence of all of the remaining exhibits offered in evidence, exhibits Nos. 3 to 15, inclusive, on the ground specified in our objection to the introduction of defendant's exhibit No. 2, and with respect to all of the assessments levied between, I think, the third day of December, 1918, and the 14th day of September, 1921, during which period the corporation was defunct by reason of the forfeiture of its corporate charter under proclamation, on the ground that any action taken by these so called board of directors, in the way of levying assessments upon the stock, was invalid.

The Court: Overruled.

Mr. McDougall: We now offer in evidence defendants' exhibit No. 16, the same being a list of stock sold each year under notice.

Mr Snow: That is objected to for the reason that the sales of which that purports to be evidence, are invalid, and

on the ground, are invalid, on the ground that the assessments pursuant to which those were levied were invalid for the reasons set forth in the objection to the introduction in evidence of defendant's exhibits Nos. 1 to 16.

The Court: Overruled.

[fol. 169] Mr. Snow: May we have exceptions to these rulings.

The Court: Both parties may have exceptions to all adverse rulings.

(Witness, resuming testimony:) I compiled the amount that is due on the various certificates in schedule A attached to the answer and those amounts are correct as shown by my records.

Cross-examination:

The amount of the proposed assessments are correctly shown in the exhibits that have been introduced numbered 1 to 15, inclusive. The aggregate of those assessments would be the aggregate amount per share or acre that has been assessed for the year 1915 up to and including the first assessment of 1923, except that there is another little change as I remember it, which is the interest on the amounts not paid is included in the full amount charged against the contract. I will illustrate how I arrived at the figures in computing the list, Schedule A., which is attached as an exhibit to defendant Canal Company's answer, those figures appearing on the last column of the schedule: Take as an illustration, contract No. 41, number of shares, 80, and so forth. The record shows that at the time this was sold, a certain amount was charged against this particular contract, that is, this particular assessment, and then the next [fol. 170] one, and so on, and so on, down to the date as you mentioned. All of those are added together—all of the charges are added together, and the interest is computed on the first assessment from the date of sale to the date mentioned; on the second assessment, from the date of assessment to the last; on the third, to the last date mentioned, and adding that to the amount due, we arrive at the total amount charged against a certain contract. There is added 20% penalty. In the first sale, illustrating, for instance, suppose we say $40.00 or 40 shares would become

delinquent, sold for delinquency, and there is a penalty of twenty per cent that should be charged—that twenty per cent is charged on the 40 dollars, that is charged on the amount due. There isn't any interest on the penalty. The penalty is only charged against the original sale price. As a general thing the corporation has delivered no water to the owners of shares of stock after the sale to my company for delinquent assessments. The expenses of operation and maintenance are not pretty largely devoted to a water master and those engaged in the distribution of water. The principal part of these assessments have been devoted to construction work and maintenance. What I mean by maintenance is putting the system in shape to deliver water the following year after the maintenance charges have been collected—cleaning out, fixing up the banks, putting in weirs, and so forth, that are deemed nec- [fol. 171] essary by the board of directors. We have a water master during the summer months. He has assistants in the way of ditch riders. The ditch riders' business is to watch the canal system and see that it is in good shape and not in danger of breaking out, and do whatever else they can do during the course of their walking up and down the ditch, and whatever water is turned out these particular ditch riders turn that out. Until this season there have always been four ditch riders. Up at the dam we employed a man to regulate the flow of the water from the reservoir. We pay our proportionate interest of a man appointed by the state patroling the Portneuf River to see that the water gets down from the river to the headgates. That patrolman wasn't on until, as I remember it, 1921, something like that. I think probably he received $194.00 twice a year, something like that. We haven't always paid that. Last year there was some dispute over some irregularity and I think it wasn't paid. We paid our water master $125.00 a month for the irrigation season. We paid our ditch riders $100.00 per month, and they pay all their expenses. The duration of the irrigation season is approximately four months, beginning, generally speaking, about the 15th of May until the 15th of September. The principal cleaning out of the ditch was done in the spring and fall. In some years we have had considerable trouble in that system with moss and employed men and teams to

[fol. 172] clean out the moss. Those items enumerated, such as the water master and ditch riders, cleaning out the ditch of moss, and cleaning out of silt in the fall and spring, are generally the items that make up the expense that the canal company has to meet, but there are some other expenses such as office expense, advertising expense, and the manager's salary; some expense of publication of notices of assessment, notices of delinquency, etc., and blacksmith's expense. My company built a new spillway where the Topons comes into the reservoir; that cost approximately $1,500.00. Sometime ago the gates in the dam became stuck, and required some repairs, but it occasioned no particular expense. During the last two or three years we have put in upper banks and sections of the ditch where the upper bank had previously not been cemented, and where it was merely resting against the side hill, and the water in some cases went up coulees and formed pond areas. We began to do that work in 1920 and 1921. Approximately $20,000.00 was spent in that improvement. The system was never able to deliver water on account of the length of the system, and on account of the moss, and further on account of these large pond areas that the water formed. These cut off very considerable amount of water because the water would run out there and stand out there and cause a great loss. Nine or ten larger [fol. 173] ponded areas were fixed. $20,000.00 was approximately the expense of putting those in. I would like the court to understand the conditions under which the records were kept of this particular expense. At the time we were putting in this upper bank, we had a good many teams in the canal, cleaning out, and as near as possible the teams working on the banks were charged to the upper bank, but part of the teams were in the cannal, and it was hard to segregate them. As near as we could we kept track of them through the man out on the job reporting to the bookkeeper, and there was very nearly $20,000.00 put into that kind of work on the upper bank. I would say that there has been approximately 5,000 acres each year drawing water. That is the acreage having water actually delivered. I would say that during the years 1918 and so forth, that it was considerably less than that. I do not know anything about it further back than 1917. Generally

speaking, 5,000 acres is a fair estimate of the land to which water was delivered during the years 1920 to 1923. Since I have been Secretary, nobody has asked for water that I know of that has not been delivered. So far as I know, none of the stock which Mr. Snow has referred to as being the subject of this suit has requested delivery of water. I believe there was a provision in the first form of water contract that the assessment should be levied whether the [fol. 174] water was used or not. I received for salary as Secretary $40.00 per month the year around. The manager receives $2,000.00 a year and pays all his expenses. The manager is not the same as the water master.

The Court: I do not think it is necessary to take any more time. It was stipulated that this money was raised and paid out for the reasonable and necessary expenses of the operation of the system.

Mr. Snow: That is perfectly satisfactory.

(Plaintiffs' Exhibit No. H., being certified copies of the record of the Secretary of State relating to the forfeiture of the charter of the defendant Portneuf-Marsh Valley Canal Company, Limited, was here offered and received in evidence.)

(Plaintiffs' Exhibits Nos. I. and J., being certified copies of the proceedings before the State Land Board of Idaho, showing the agreement between the defendant Portneuf-Marsh Valley Irrigation Company and the Portneuf-Marsh Valley Canal Company, Limited, under the terms of which the irrigation project was accepted, were offered and received in evidence.)

(Plaintiffs' Exhibits K. and L., being certified copies of certain records of the State Land Board showing proceedings whereby there were cancelled by the Land Board Carey [fol. 175] Act land entries to which these shares to stock were appurtenant, were offered and received in evidence.)

(Witness, resuming testimony:) These latter proceedings were had after the land had been sold, and after the stock had been deposited with the trustees as security.

(Plaintiffs' Exhibit M., being certified copy of the deed whereby the Portneuf-Marsh Valley Irrigation Company

conveyed the irrigation system to the Portneuf-Marsh Valley Canal Company, Limited, was here offered and received in evidence.)

C. M. Brewer, being recalled on behalf of plaintiffs, testified as follows:

When the Kidder-Peabody Company, present owners of the bonds, purchased these bonds, they did not purchase from the Irrigation Company, but purchased from the bondholders scattered all over the Middle West. The purchases occurred from the first of June, 1916 to some time in September, 1916. That was prior to the appointment of Brown and Chapin, trustees.

Both sides rest.

Here follow the exhibits introduced in evidence:

Statement re Plaintiff's Exhibit "A"

(Plaintiff's Exhibit "A" introduced in evidence is the same as plaintiff's exhibit "A" attached to the bill of com-[fol. 176] plaint, and appears in the printed transcript with the bill of complaint.)

Complainant's Exhibit "B"

Nos.	Denomination	Bonds	Amount
1 to 20 incl	$500	20	$10,000 00
22 to 29 incl	500	8	4,000 00
33 to 37 incl	500	55	27,500 00
94 to 171 incl	500	78	39,000 00
173 to 187 incl	500	15	7,500 00
190 to 239 incl	500	50	25,000 00
242 to 424 incl	500	183	91,500 00
Total		409	$204,500 00

PLAINTIFF'S EXHIBIT No. B-1

No. 151

United States of America

The Portneuf-Marsh Valley Irrigation Company, Limited, First Mortgage Six per Cent (6%) Gold Bond

Know all men by these presents, That Portneuf-Marsh Valley Irrigation Company, Limited, a corporation, organized and existing under the laws of the State of Idaho, acknowledges itself to owe and for value received hereby promises to pay to the bearer of this bond or in case this bond is registered to the registered holder thereof five hundred ($500.00) dollars, in gold coin of the United States of America of the present standard of weight and fineness on the first day of July, A. D. 1918 at the Banking House of Colonial Trust and Savings Bank of Chicago and to pay [fol. 177] interest thereon at the rate of six per cent (6%) per annum, payable semi-annually, in like gold coin on the first day of January and the first day of July in each year until the principal sum shall be fully paid upon the presentation and surrender of the respective coupons hereto annexed at the said Banking House of Colonial Trust and Savings Bank of Chicago as they severally become due. Both principal and interest of this bond are payable without deduction for any United States, State, County, Municipal or other tax or taxes or stamp duties which the Portneuf-Marsh Valley Irrigation Company, Limited, may be required to pay, deduct or retain therefrom under or by reason of any present or future law and the Portneuf-Marsh Valley Irrigation Company, Limited, hereby agrees to pay such tax or taxes and stamp duties. This bond is redeemable at the option of the Company on July 1, 1913, or on the first day of any July thereafter in the manner and upon the conditions prescribed in said mortgage or deed of trust.

This bond in conformity with the requirements of the mortgage or deed of trust hereinafter referred to is secured by deposits with the Trustees under the said mortgage or deed of trust of water contracts, notes or mortgages which are a lien upon the land irrigated by the Portneuf-Marsh

Valley Irrigation Company, Limited, the par or face value of such contracts, notes or mortgages so deposited as aforesaid being one and one-half (1½) times the par or face value of this bond. This bond is one of an issue of bonds of said Portneuf-Marsh Valley Irrigation Company, Limited, of like date, tenor and effect, rate of interest, maturity and denomination, numbered consecutively from one [fol. 178] (1) to six hundred (600) issued and to be issued to an amount not exceeding in the aggregate the principal sum of $300,000, under the provisions of and equally secured by a mortgage or deed of trust of even date herewith, made to Colonial Trust and Savings Bank of Chicago, a corporation duly organized and existing under the laws of the State of Illinois and L. C. Rose, of Chicago, Illinois, joint Trustees, covering all the property rights and franchises of the Portneuf-Marsh Valley Irrigation Company, Limited, set forth in said mortgage or deed of trust to which reference is made for a description rights and franchises mortgaged, and the nature and extent of the security, the rights of the holders of bonds under the same and the terms and conditions under which said bonds are issued and secured. If default shall be made in the payment of the interest of this bond or in the performance of certain covenants and agreements in said mortgage or deed of trust then the principal of this bond may become due and payable on the conditions and in the manner and at the time provided in said mortgage or deed of trust. This bond may be registered as to the payment of the principal upon the books of Colonial Trust and Savings Bank, one of said Trustees, at its office in the City of Chicago in the manner provided in such mortgage or deed of trust, but such registration shall not affect the negotiability of the coupons by delivery. After such registration no transfer of this bond except made on such books shall be valid unless the last transfer made on such books shall have been made to bearer. This bond shall continue subject to the successive registration and transfer to bearer as aforesaid at the option of the owner. No recourse shall be had for [fol. 179] the payment of the principal or interest of this bond to any stockholder, director or Officer of the Company whether by any statute or by the enforcement of any

assessment or otherwise howsoever. This bond shall not be valid or obligatory for any purpose until it shall have been authenticated by the signature of Colonial Trust and Savings Bank of Chicago, one of the Trustees, to the Certificate endorsed hereon.

In witness whereof, the Portneuf-Marsh Valley Irrigation Company, Limited, has caused this bond to be signed by its President and its corporate seal to be hereto affixed, attested by its Secretary, and the interest coupons hereto attached to be executed with the engraved signature of its Treasurer, as of the first day of July, A. D. 1909.

Portneuf-Marsh Valley Irrigation Company, Limited, by D. W. Stanrod, President.

Attest: T. M. Edwards, Secretary. (Corporate Seal.)

(Endorsements)

Trustee's Certificate

The within bond is one of the bonds issued under and described in the within mentioned Mortgage or Deed of Trust.

Colonial Trust and Savings Bank, Trustee, by D. D. Van Buskirk, Secretary.

[fol. 180] No. 151. United States of America, State of Idaho. The Portneuf-Marsh Valley Irrigation Company, Limited, first-mortgage six per cent gold bond. $500. Principal due July 1st, 1918. Interest payable January 1st and July 1st at the banking-house of Colonial Trust & Savings Bank, in the city of Chicago, Ill.

Registry Form

No writing below except by an officer of the Trust Company.

Date of registry	In whose name registered	Transfer agent
.....	.....	.....
.....	.....	.....
.....	.....	.....

The Portneuf-Marsh Valley Irrigation Company will pay to the bearer on the first day of January, 1915, at the bank-[fol. 181] ing-house of Colonial Trust and Savings Bank of Chicago, fifteen ($15.00) dollars in gold coin of the United States of America of the present standard of weight and fineness, without deduction for taxes or stamp duties being six months' interest due on that date on its First Mortgage six per cent Gold Bond No. 151.

Coupon No. 11. $15.00.

George T. Hyde, Treasurer.

(Other coupons of similar form attached.)

[fol. 182] PLAINTIFF'S EXHIBIT No. C

List of water contracts deposited and now on deposit with the trustees in accordance with the terms and conditions of the trust deed of Portneuf-Marsh Valley Irrigation Company, Ltd., dated July 1, 1909, and recorded in Book 11 of Mortgages, at page 528, records of Bannock County, Idaho.

Contract No.	Date	Purchasers	Stock cert. No.	No. shares	Exhibit No.
55	Sept. 7, 1908,	R. E. Nelson	55	80	C- 1 Old Form
162	Mar. 29, 1915,	H. E. Conine	162	40	C- 2 New Form
1	Mar. 13, 1915,	Heriot Riddle	1	80	C- 3 New Form
2	Oct. 9, 1915,	Conrad Leader	2	80	C- 4 New Form
3	Sept. 7, 1908,	W. H. Coffin	3	40	C- 5 Old Form
4	Mar. 30, 1915,	F. C. Knight	4	80	C- 6 New Form
5	Mar. 4, 1915,	S. F. Johnson	5	40	C- 7 New Form
7	Sept. 8, 1908,	E. E. Gillispie	7	80	C- 8 Old Form
8	Mar. 4, 1915,	Frank Fline	8	40	C- 9 New Form
9	Sept. 7, 1908,	L. C. Pond	9	80	C- 10 Old Form
10	Apr. 10, 1915,	Joseph Murphy	10	80	C- 11 New Form
11	Mar. 18, 1915,	O. A. Smith	11	80	C- 12 New Form
12	Oct. 29, 1915,	John Ware	12	80	C- 13 New Form
14	May 20, 1915,	H. M. Tibbitts	14	80	C- 14 New Form
15	Oct. 8, 1915,	John S. Hyde	15	40	C- 15 New Form
16	Sept. 7, 1908,	Ella M. Coad	16	80	C- 16 Old Form
[fol. 183]					
17	Nov. 19, 1915,	F. D. Catheart	17	80	C- 17 New Form

19	Mar. 30, 1915, Arthur M. Susong	19	80	C- 18 New Form
20	Mar. 30, 1915, Wesley K. Walton	20	40	C- 19 New Form
21	Nov. 6, 1915, Mary Ethel Mock, now Mary E. Gregory	21	80	C- 20 New Form
22	Mar. 26, 1915, D. W. Evans	22	80	C- 21 New Form
23	Dec. 18, 1915, Robert L. Hardwick	23	40	C- 22 New Form
24	May 20, 1915, Harry M. Tibbitts	24	80	C- 23 New Form
28	Sept. 7, 1908, Wilburn J. Tull	28	40	C- 24 Old Form
29	Mar. 4, 1915, John C. Owens	29	40	C- 25 New Form
31	Sept. 7, 1908, R. D. Clinton	31	80	C- 26 Old Form
32	Sept. 7, 1908, Anton K. Dahlen	32	40	C- 27 Old Form
33	Mar. 4, 1915, C. E. Layton	33	80	C- 28 New Form
34	Mar. 17, 1915, C. N. Ray	34	80	C- 29 New Form
36	Mar. 11, 1915, W. I. Layton	36	80	C- 30 New Form
37	Mar. 23, 1915, John Catheart	37	80	C- 31 New Form
39	Nov. 15, 1915, J. E. Catheart	39	80	C- 32 New Form
40	Nov. 24, 1915, Robert L. Van Eaton	40	40	C- 33 New Form
41	Apr. 30, 1915, Anna R. Todd	41	80	C- 34 New Form
42	Mar. 24, 1915, Vinnie R. Walling	42	80	C- 35 New Form
44	Mar. 10, 1915, Jacob L. Hartvigsen	44	40	C- 36 New Form

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45	Oct. 13, 1915, Harry C. Taylor	45	80	C- 37 New Form
46	Mar. 17, 1915, E. G. Widmann	46	80	C- 38 New Form
48	Mar. 20, 1915, E. A. Goddard	48	80	C- 39 New Form
49	Mar. 17, 1915, E. G. Widmann	49	80	C- 40 New Form
51	Sept. 7, 1908, Ella Meier	51	80	C- 41 Old Form

List of Water Contracts—Continued

Contract No.	Date	Purchasers	Scrok cert. No.	No. shares	Exhibit No.
52	Oct. 13, 1915,	T. C. Lawler	52	80	C- 42 New Form
53	Nov. 9, 1915,	E. G. Widmann	53	80	C- 43 New Form
54	Sept. 7, 1908,	C. P. Bartlett	54	80	C- 44 Old Form
56	Oct. 3, 1908,	Albert B. Perkins	56	80	C- 45 Old Form
57	May 17, 1915,	Benj. S. Crow	57	80	C- 46 New Form
59	Mar. 4, 1915,	C. K. Hensman	59	40	C- 47 New Form
60	Mar. 26, 1915,	Charles Webber	60	40	C- 48 New Form
62	Nov. 16, 1908,	Charles A. Heath	62	80	C- 49 Old Form
63	Mar. 13, 1915,	O. C. Wilkes	63	52 71 100ths	C- 50 New Form
64	Oct. 30, 1915,	W. H. Wistner	64	52 74 100ths	C- 51 New Form
65	Apr. 26, 1915,	Sophia C. Roberts	65	40	C- 52 New Form
66	Dec. 14, 1908,	E. C. Overton	66	80	C- 53 Old Form
68	Mar. 15, 1915,	L. F. King	68	80	C- 54 New Form
70	Oct. 21, 1915,	A. M. Brownlee	70	80	C- 55 New Form
71	Mar. 4, 1915,	Thomas R. Bennett	71	80	C- 56 New Form
[fol. 185]					
72	Apr. 12, 1915,	Dean Vincent	72	40	C- 57 New Form
73	Mar. 4, 1915,	John H. Hartvigsen	73	40	C- 58 New Form
74	Mar. 3, 1915,	N. S. Coffin	74	40	C- 59 New Form
75	Mar. 22, 1915,	D. C. Olmstead	75	52 76 100ths	C- 60 New Form
76	Mar. 15, 1915,	N. J. Hartvigsen	76	40	C- 61 New Form
77	89. Mar. 25, 1915,	John F. Widmann	77 89	80 (40 each)	C- 62 New Form

78	Apr. 24, 1909, Justin R. Porter	78	40		C- 63 Old Form
79	Mar. 29, 1915, J. C. Tewell	79	52 79/100ths		C- 64 New Form
80	Mar. 28, 1915, Mary F. Zoerb	80	80		C- 65 New Form
81	Mar. 27, 1915, W. F. Kasiska	81	80		C- 66 New Form
82	Mar. 27, 1915, W. F. Kasiska	82	80		C- 67 New Form
83	Apr. 27, 1909, Oliver Chambers	83	80		C- 68 Old Form
84	Apr. 28, 1909, Everard Chambers	84	80		C- 69 Old Form
85	Mar. 10, 1915, Anna Kelley	85	80		C- 70 New Form
86	Oct. 25, 1915, W. T. Morley	86	40		C- 71 New Form
87	Mar. 27, 1915, Mabel J. Kasiska	87	80		C- 72 New Form
88	Mar. 15, 1915, Moses Christiansen	88	40		C- 73 New Form
90	Nov. 1, 1915, Guy E. Tripp	90	40		C- 74 New Form
91	Mar. 3, 1915, W. H. Chester	91	40		C- 75 New Form
92	Nov. 6, 1915, J. L. Robinson	92	80		C- 76 New Form
93	Nov. 15, 1915, J. L. Robinson	93	80		C- 77 New Form

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94	May 14, 1909, Fred J. Paek	94	40		C- 78 New Form
95	Mar. 25, 1915, John F. Widmann	95	78 73/100ths		C- 79 New Form
96	Mar. 27, 1915, N. S. Pond	96	80		C- 80 New Form
97	Mar. 8, 1915, F. D. Staves	97	80		C- 81 New Form
98	Apr. 5, 1915, L. W. Woodin	98	40		C- 82 New Form
99	43 47 Mar. 17, 1915, E. G. Widmann 99 43 47		120 (40 each)		C- 83 New Form
100	Mar. 8, 1915, Nils O. Pehrson	100	40		C- 84 New Form
101	Mar. 26, 1915, Emma Beckley	101	40		C- 85 New Form
103	Mar. 3, 1915, J. A. Fitts	103	40		C- 86 New Form

List of Water Contracts—Continued

Contract No.	Date	Purchasers	Sctok cert. No.	No. shares	Exhibit No.
105	Oct. 15, 1915,	H. V. Monell	105	80	C- 87 New Form
108	May 17, 1915,	H. A. Weddle	108	39 57/100ths	C- 88 New Form
109	Mar. 13, 1915,	O. W. Bishop	109	52 67/100ths	C- 89 New Form
110	Mar. 3, 1915,	T. W. Bennett	110	40	C- 90 New Form
111	Apr. 10, 1915,	Robert Dill	111	80	C- 91 New Form
112	Apr. 1, 1915,	Fred L. Olmstead	112	40	C- 92 New Form
113	Mar. 6, 1915,	Jacob L. Hartvigsen	113	40	C- 93 New Form
114	Mar. 4, 1915,	O. P. Merrill	114	40	C- 94 New Form
115	Mar. 27, 1915,	E. C. White	115	80	C- 95 New Form
116	June 1, 1915,	Wm. M. Underwood	116	40	C- 96 New Form
120	Mar. 24, 1915,	A. F. Daughenbaugh	120	80	C- 97 New Form
121	Mar. 13, 1915,	L. D. Brown	121	80	C- 98 New Form
[fol. 187]					
122	Feb. 15, 1910,	C. D. Shepard	122	42 12/100ths	C- 99 Old Form
124	Apr. 19, 1910,	L. N. Allen	124	105 1/100th	C-100 Old Form
125	Mar. 4, 1915,	W. H. Coffin	125	52 60/100ths	C-101 New Form
126	Mar. 10, 1915,	Theodore Britton	126	40	C-102 New Form
127	Mar. 27, 1915,	A. S. Maxham	127	80	C-103 New Form
128	Mar. 20, 1915,	Lottie L. Cobb	128	80	C-104 New Form
129	Mar. 27, 1915,	L. A. Trowbridge	129	80	C-105 New Form
130	May 22, 1915,	Olivia J. Hanchett	130	80	C-106 New Form
131	Mar. 22, 1910,	F. C. Knight	131	80	C-107 Old Form

132	May 20, 1910, Robert M. Ingalls	132	80	C-108	Old Form
133	Mar. 22, 1910, Charles F. Ingalls	133	80	C-109	Old Form
134	Mar. 23, 1910, John A. Gardner	134	40	C-110	Old Form
135	Mar. 23, 1910, L. O. Poynter	135	40	C-111	Old Form
136	Mar. 4, 1915, Gertrude Bennett	136	40	C-112	New Form
137	Apr. 10, 1915, Robert Dill	137	53 40/100ths	C-113	New Form
138	Mar. 3, 1915, Conrad Leader	138	40	C-114	New Form
139	Apr. 2, 1910, Thomas Coffin	139	80	C-115	Old Form
140	Mar. 13, 1915, John Anderson	140	40	C-116	New Form
144	Apr. 6, 1910, Walter Monocal	144	40	C-117	Old Form
145	Mar. 15, 1915, James C. Mock	145	40	C-118	New Form

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146	April 9, 1910, David Burnett	146	40	C-119	Old Form
150	April 14, 1910, Charles W. Woody	150	40	C-120	Old Form
151	Nov. 4, 1915, J. A. Fitts	151	40	C-121	New Form
152	Mar. 6, 1915, W. B. Astin	152	40	C-122	New Form
153	Mar. 6, 1915, John L. Dahlke	153	40	C-123	New Form
154	Mar. 10, 1915, Thomas Jenkins	154	80	C-124	New Form
155	Mar. 29, 1915, Elizabeth H. Burhoe	155	80	C-125	New Form
157	May 6, 1910, Sarah F. Skeeles	157	80	C-126	Old Form
158	Oct. 15, 1915, F. P. Sleeper	158	80	C-127	New Form
159	Mar. 29, 1915, Chas. W. Woody	159	40	C-128	New Form
161	Mar. 19, 1915, Wm. I. Anderson	161	40	C-130	New Form
163	Mar. 3, 1915, A. C. Hancock	163	40	C-131	New Form
165	Mar. 28, 1915, D. W. Conine	165	80	C-132	New Form
170	Oct. 7, 1910, Georgia M. Steteler	170	40	C-133	Old Form

List of Water Contracts—Continued

Contract No.	Date	Purchasers	Setok cert. No.	No. shares	Exhibit No.
171	April 8, 1915,	E. L. Mattoon	171	53 34/100ths	C-134 New Form
174	Mar. 13, 1915,	R. H. Christensen	174	40	C-135 New Form
175	Aug. 19, 1915,	Lou Pyle	175	39 99/100ths	C-136 New Form
180	Mar. 5, 1915,	Ira Goff	180	40	C-137 New Form
184	Mar. 3, 1915,	Conrad Leader	184	15	C-138 New Form
A- 2	Mar. 3, 1915,	Peter Christiansen	A- 2	41	C-139 New Form
[fol. 189]					
A- 3	Mar. 15, 1915,	J. L. Hartvigsen	A- 3	1	C-140 New Form
A- 6	Aug. 8, 1911,	Jerry Christiansen	A- 6	40	C-141 Old Form
A- 7	Mar. 4, 1915,	O. P. Merrill	A- 7	80	C-142 New Form
A- 8	Mar. 6, 1915,	Frederick L. Barnes	A- 8	10	C-143 New Form
A- 9	Mar. 27, 1915,	W. P. Havenor	A- 9	172 56/100ths	C-144 New Form
A-10	May 17, 1915,	Benj. S. Crow	A-10	80	C-145 New Form
A-11	Mar. 3, 1915,	W. H. Chester	A-11	10	C-146 New Form
A-12	Mar. 30, 1915,	Fred Mueller	A-12	10	C-147 New Form
A-13	Aug. 8, 1911,	A. A. Ballard	A-13	4 1/10th	C-148 Old Form
A-18	Mar. 30, 1915,	J. J. Barnes	A-18	30	C-149 New Form
A-20	Mar. 4, 1915,	Leander T. Whitaker	A-20	39 97/100ths	C-150 New Form
A-23	Oct. 20, 1911,	Charles H. Norton	A-23	15	C-151 Old Form
A-24	Mar. 4, 1915,	Wm. J. Bybee	A-24	40	C-152 New Form
A-25	June 4, 1912,	Chester O. Christensen	A-25	30	C-153 Old Form
A-38	Mar. 4, 1915,	Andrew J. Newbold	A-38	40	C-154 New Form

13	Apr. 10, 1915, Joseph Murphy			C-155 New Form
27	Mar. 15, 1915, G. A. Sievers (an undivided ½ interest) and J. A. Fitts and Mary M. Fitts, his wife (an undivided ½ interest)			C-156 New Form
30	May 1, 1915, D. C. Ray and Mattie Ray			C-157 New Form
50	Nov. 4, 1915, J. A. Fitts and Mary M. Fitts			C-158 New Form

[fol. 190]

119	Oct. 15, 1915, H. V. Monell			C-159 New Form
173	Mar. 28, 1911, Zadock Earle Postle			C-160 Old Form
179-183	Mar. 17, 1915, Lucian C. Farr, Jr.			C-161 New Form
178-182	Mar. 17, 1915, Lucian C. Farr and Sarah A. Farr			C-162 New Form
181	Mar. 6, 1915, Chas. D. McCormick			C-163 New Form
201	June 26, 1916, Conrad Leader and Edna Leader			C-164 New Form
38	Sept. 7, 1908, Robert L. Van Eaton			C-165 Old Form
A-37	Mar. 31, 1913, William Laurence and Isabel Laurence			C-166 Old Form
A-39	May 25, 1916, Ida P. Reisner			C-167 New Form
A- 5	George T. Hyde	A- 5	60	C-168 New Form
178	Lucian C. Farr	178	40	C-169 New Form
187	Charles C. Hunt	187	15	C-170 New Form
189	Conrad Leader	189	10	C-171 New Form
191	Heber F. Johnson	191	10	C-172 New Form

List of Water Contracts—Continued

Contract No.	Date	Purchasers	Setok cert. No.	No. shares		Exhibit No.
192		C. D. McCormick	192	15		C-173 New Form
193		L. H. McCormick	193	15		C-174 New Form
194		Zeb Fitts	194	5		C-175 New Form
[fol. 191]						
195		Abner L. Nichols	195	10		C-176 New Form
	July 26, 1915,	Ella M. Coad				C-177 New Form
35	Sept. 7, 1908,	Duane E. Kent	35	80		C-178 Old Form
X-67	Mar. 8, 1915,	C. H. Overton	X-67	80		C-179 New Form
69	Dec. 14, 1908,	John W. Alldred	69	80		C-180 Old Form
104	Aug. 7, 1909,	John H. Moyes	104	40		C-181 Old Form
118	Nov. 19, 1909,	Lillian M. Gillispie	118	40		C-182 Old Form
123	Mar. 4, 1910,	George A. Nixon	123	80		C-183 Old Form
141	Apr. 20, 1910,	O. M. Engdahl	141	79	93/100ths	C-184 Old Form
143	Apr. 6, 1910,	William A. Webster	143	40		C-185 Old Form
164	Sept. 16, 1910,	H. A. Curtis	164	40		C-186 Old Form
177	Sept. 28, 1911,	Lee McDonough	177	80		C-187 Old Form
149	May 6, 1910,	Chas. O. Reynolds	149	81	03	C-188 Old Form
168	Sept. 6, 1910,	Jo. S. Mornson	168	40	34/100ths	C-189 Old Form
169	Oct. 15, 1910,	Herman Anderson	169	79	75/100ths	C-190 Old Form
172	Oct. 8, 1910,	Guy C. Eaton	172	40		C-191 Old Form
176	Aug. 8, 1911,	Frank W. Blue	176	40		C-192 Old Form

[fol. 192] PLAINTIFF'S EXHIBIT C-1

Contract No. 55

Portneuf-Marsh Valley Irrigation Company, Ltd.

Agreement

This agreement, made in duplicate this 7th day of September, 1908, between the Portneuf-Marsh Valley Irrigation Company, Limited, (for convenience hereinafter called "the company"), a corporation organized and existing under the laws of the State of Idaho, party of the first part, and R. E. Nelson (for convenience hereinafter called "the purchaser"), of Boise, State of Idaho, party of the second part, witnesseth:

That the Company has heretofore entered into a contract with the State of Idaho, acting by its State Board of Land Commissioners, whereby the Company bound itself to construct a system of canals and irrigation works for the reclamation and irrigation of certain lands therein described and referred to, which contract is of record in the office of the Register of the State Board of Land Commissioners at Boise City, Idaho, and is dated June 3, 1908.

That the Company has heretofore entered upon the work of construction of said irrigation system for the purpose of diverting from the Portneuf River the waters thereof under the appropriation of the Portneuf-Marsh Valley Irrigation Company, made December 18th, 1907, as set out and described in Permit No. 3317 issued by the State Engineer of the State of Idaho.

That the State Board of Land Commissioners, pursuant to law and its rules and regulations, has notified the Com-[fol. 193] pany that it may proceed to sell or contract rights to the use of water flowing and to flow through the canals, and rights to and in said system of irrigation works, pursuant to law and to the terms of said contract with the State.

That the purchaser has made application to the Company to be permitted to purchase, upon the terms hereinafter set forth, the rights and privileges by said contract guaranteed, to the extent hereinafter named, which said application has been accepted by the Company subject to the approval of the State Board of Land Commissioners, whose approval, previous to the delivery hereof, has been by its register endorsed hereon.

That in consideration of the sum of Two Hundred and Forty Dollars, cash in hand paid this day by the purchaser to the Company and in consideration of the covenants and agreements hereinafter contained the purchaser hereby purchases Certificate No. 55 for 80 shares of the capital stock of the Portneuf Marsh Valley Canal Company, Limited, in form as follows, to-wit:

Portneuf-Marsh Valley Canal Company Limited

Capital: $20,000.00

80 Shares. —— —, 190–.

This is to certify that R. E. Nelson is the owner of 80 shares of the capital stock of the Portneuf-Marsh Canal Company Limited, transferable on the books of the Company by endorsement thereon. Each share entitles the owner thereof to receive one-eightieth of a cubic foot of water per acre per second of time for the following de- [fol. 194] scribed land: W. ½ of the N. W. ¼ of Sec. 20, T. 11 S., Range 37 E. B. M. in the County of Bannock, State of Idaho; and this certificate also entitles the owner to a proportionate interest in the dam, canal, reservoir and water rights and all other rights and franchises of this Company, based upon the number of shares finally sold, in accordance with the contract between the Portneuf-Marsh Valley Irrigation Company and the State of Idaho, dated June 3, 1908.

In witness whereof the Portneuf-Marsh Valley Canal Company, Limited, has caused this certificate to be sealed with i-s corporate seal and signed by its duly authorized officers this — day of —— 190-.

Portneuf-Marsh Valley Canal Company, Limited,
by —— ——, President.

Attest: —- ——, Secretary.

Said certificate to be delivered as provided for in said State Contract and under the conditions therein stated.

The water which the purchaser shall have the right to conduct and receive through the said canal system shall be used upon and the water shall become dedicated and be appurtenant to the following described land and no other,

to-wit: The W. ½ of the N. W. ¼ in Section 20 of Township 11 South of Range 37 East, containing Eighty acres in Bannock County, Idaho.

And the parties hereto expressly agree as follows, to-wit:

1. This agreement is made in accordance with the provisions of said contract between the State of Idaho and the [fol. 195] Company, which, together with the laws of the State of Idaho under which this agreement is made, shall be regarded as defining the rights of the respective parties, and regulates the provisions of the shares of stock of the Portneuf-Marsh Valley Canal Company, Limited.

2. The Company agrees that so long as it retains control of the Portneuf-Marsh Valley Canal Company, Limited to-wit, so long as it shall continue to vote a majority of the stock of said Company, as provided by the State Contract, that it will cause said Company to keep and maintain the said irrigation system in good order and condition and to cause any necessary repairs thereto to be made as soon as practicable and expedient.

Said Portneuf-Marsh Valley Canal Company, Limited, is to have power to levy all necessary tolls, charges and assessments upon all users of water in proportion to their respective holding of stock, whether water is used or not and the Company hereby agrees that no charges shall be made for the delivery of water from this date until after the first day of April, 1909, and then only if the water from their reservoir and irrigation system is available for delivery, and that thereafter the annual charge for maintenance shall not, while the Company is in control of the said Pornteuf-Marsh Valley Canal Company Limited, exceed the sum of 50 cents for each and every acre to be charged against the entire acreage entered irrespective of the irrigation thereof. The purchaser agrees to pay said charges in advance at the office of the Portneuf-Marsh Valley Canal Company, Limited, on the first day of April of each year without notice.

[fol. 196] 3. The purchase price for the shares of stock hereby purchased is the sum of $240.00 and the balance thereof remaining due after the cash payment hereinbefore acknowledged, to-wit, the sum of $2,560.00, is due and payable as follows, to-wit:

[fol. 197]

	Due	Principal	Interest	Amount
1st Deferred Payment	April 1, 1909	$280.00	$.....	$280.00
2nd Deferred Payment	April 1, 1910	280.00	136.80	416.00
3rd Deferred Payment	April 1, 1911	280.00	120.00	400.00
4th Deferred Payment	April 1, 1912	280.00	103.20	383.20
5th Deferred Payment	April 1, 1913	280.00	86.40	366.40
6th Deferred Payment	April 1, 1914	280.00	69.60	349.60
7th Deferred Payment	April 1, 1915	280.00	52.80	332.80
8th Deferred Payment	April 1, 1916	280.00	36.00	316.00
9th Deferred Payment	April 1, 1917	280.00	19.20	339.20

[fol. 198] Interest from April 1, 1909, at six per cent may be charged if water is available from said reservoir and canal for use during the irrigation season of 1909 and if not available for said season interest shall commence when such water is available. But it is further understood and agreed that no payment other than the initial payment and no interest shall be required to be paid under this contract until the water is available for distribution from said reservoirs and canals at a point within one-half mile of each quarter section and such water must be available at the beginning of the irrigation season in order to make such payments become due, and all payments and interest provided in this contract shall be advanced in time according to the delay in the delivery of the said water as aforesaid.

4. The purchaser hereby covenants and agrees that upon default in the payment of any of the payments above specified, or of the interest thereon, or any annual charge, toll or assessment, for the operation and maintenance of the irrigation system hereinbefore provided for, the Company may declare the entire amount of the principal purchase price for said water rights, due, and may proceed either in law or equity to collect the same, and to enforce any lien which it may have upon the water rights hereby contracted, or upon the lands to which said water rights are dedicated or may at its option proceed to enforce any remedy given by the laws of Idaho to the Company against the purchaser.

And the purchaser hereby further covenants that he will and by these presents does hereby grant, assign, transfer and set over by way of mortgage or pledge to the Company [fol. 199] to secure the payments of the amounts due and to become due on the purchase price of the shares of stock hereby purchased, any and all interest, and all rights which he now has or which may hereafter accrue to him under his contract with the State of Idaho, for the purchase of the lands to which the water rights hereby purchased are dedicated, and further that immediately upon transfer to him of the legal title to said lands or any part thereof, he will, upon demand, execute in proper form, a mortgage or deed of trust with power of sale in such form as may be approved by the State Board of Land Commissioners to secure the payments herein provided for, which said mortgage the

purchaser hereby covenants and agrees shall be a first lien upon the lands so mortgaged, superior to any and every incumbrance in favor of any persons whomsoever.

5. The purchaser agrees that to further secure said payments the shares of stock purchased in the Portneuf-Marsh Valley Canal Company, Limited, shall be and they are hereby assigned and transferred to the Company with power to pledge the same and said Company and its agents and assigns are hereby authorized and empowered to vote said stock in such manner as it or they may deem proper at all meetings of the stockholders of said Company until 35 per cent of the purchase price of said stock has been paid.

6. It is agreed that no water shall be delivered to the purchaser from said irrigation system while any installment of principal or interest is due and unpaid from the purchaser to the Company or while any toll or assessment is due and unpaid from the purchaser to the Portneuf-Marsh Valley Canal Company, Limited.

[fol. 200] 7. This contract may be assigned by the Company and thereupon the payment of principal and interest if so provided shall be due and payable to the assignee, but the payments for tolls, assessments and charges for the delivery of water shall, unless otherwise provided be paid to the Portneuf-Marsh Valley Canal Company, Limited, and payment thereof may be enforced by it.

8. This contract is made pursuant to and subject to the Contract between the Company and the State of Idaho and the existing laws of said State.

9. All notices given to second party by the State Board of Land Commissioners or by the first party hereto or its assigns may be sent to second party by mail addressed to Box 904, Boise, Idaho.

In witness whereof the parties have hereunto subscribed their names, and the Company has caused its seal to be affixed the day and year above written in duplicate.

Portneuf-Marsh Valley Irrigation Company, Limited, by T. M. Edwards, Sec. R. E. Nelson.

In the presence of A. J. Hopkins, R. D. Bothwell, Witnesses.

STATE OF IDAHO,
County of Boise, ss:

On this 3d day of Nov. in the year 1908, before me, Sherman Glenn, a Notary Public in and for said County, personally appeared R. E. Nelson, known to me to be the per- [fol. 201] son whose name is subscribed to the above instrument and acknowledged to me that he executed the same.

Attest my hand and official seal the day and year in this certificate first above written.

Sherman Glenn, Notary Public. My commission expires Feb. 14th, 1911. (Seal.)

I hereby certify that the above is the original contract in the above matter.

Attest:

T. M. Edwards, Secretary Portneuf-Marsh Valley Irrigation Company.

The foregoing is hereby approved, and has been registered this 19th day of Nov., 1908.

State Board of Land Commissioners, by M. I. Church, Register. (Seal of Land Board.)

Downey, Idaho, Dec. 18, 1909.

For value received this contract, principal and interest, is hereby assigned and transferred to Colonial Trust & Savings Bank and L. C. Rose by authority of a resolution of the Board of Directors of the Portneuf-Marsh Valley Irrigation Company.

Portneuf-Marsh Valley Irrigation Company, Limited, by T. M. Edwards, Sec.

[fol. 202] (Endorsements:) 15668. No. 55. Dated Sept. 7, 1908. Contract. Portneuf-Marsh Valley Irrigation Co., Ltd., with R. E. Nelson. Filed for record at the request of D. W. Standrod at 10 minutes past 4 o'clock P. M., this 20th day of Dec. 1909 and recorded in Book 2 of Agree., page 23 Records of Bannock County, State of Idaho. E. G. Gallett, recorder, by W. A. Hyde, deputy. Fee $4.00. Indexed. Compared.

Stock Certificate Attached to and a Part of Plaintiff's Exhibit C-1

Incorporated under the Laws of the State of Idaho

Number 55. 80 shares.

Portneuf-Marsh Valley Canal Company, Limited

Capital Stock: $20,000

This is to certify that R. E. Nelson is the owner of eighty [fol. 203] shares of the capital stock of the Portneuf-Marsh Valley Canal Company, Limited, transferable on the books of the Company by endorsement hereon.

Each share entitles the owner thereof to receive one-eightieth of a cubic foot of water per acre per second of time for the following described land:

W. ½ of N. W. ¼, Sec. 20, T. 11 S., R. 37 E. B. M. in the county of Bannock, State of Idaho; and this Certificate also entitles the owner to a proportionate interest in the dam, canal, reservoir, and water rights and all other rights and franchises of this Company, based upon the number of shares finally sold, in accordance with the contract between the Portneuf-Marsh Valley Irrigation Company, Limited, and the State of Idaho, dated June 3d, 1908.

In witness whereof, the Portneuf-Marsh Valley Canal Company, Limited, has caused this Certificate to be sealed with its Corporate Seal and signed by its duly authorized officers this 19th day of Sept., 1908.

Portneuf-Marsh Valley Canal Company, Limited, by L. W. Johnson, President.

Attest: Edwin Snow, Secretary. (Corporate Seal.)

(Endorsements:) 55. For value received — do hereby sell, assign and transfer unto —— —— — shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint —— —— true [fol. 204] and lawful authority to transfer all the said stock on the books of the within named Company, with full power of substitution and revocation in the premises. Dated, Oct. 17, 1908. R. E. Nelson. In the presence of: A. J. Hopkins. Certificate for eighty shares of the capital stock of the Portneuf-Marsh Valley Canal Company, Limited. Issued to R. E. Nelson. Dated —— —, 19—.

PLAINTIFF'S EXHIBIT C-2

Portneuf-Marsh Valley Irrigation Company, Limited

Agreement

This agreement, made in duplicate this 29th day of March, 1915, between the Portneuf-Marsh Valley Irrigation Company, Limited (for convenience hereinafter called the Company), party of the first part, and H. E. Conine and Ruth Conine, his wife, of Collinston, state of Utah (for convenience hereinafter called the Purchaser-), part- of the second part;

Witnesseth: Whereas, the Purchaser —— —— hereto- [fol. 205] fore contracted to purchase from the Company Certificate No. 162 for 40 shares of the capital stock of the Portneuf-Marsh Valley Canal Company, Limited (hereinafter called the Operating Company), by the terms of a certain agreement in writing, recorded in Book 2 of Agreements, at page 151, Records of Bannock County Idaho, and a certain supplemental agreement extending the time of payments upon the purchase price thereof.

And whereas, the parties hereto desire to supersede and annul said contract of purchase and said supplemental agreement and enter into a new contract which shall hereafter solely and fully define their respective rights and obligations with reference to the purchase of such stock;

Now, therefore, in consideration of the sum of one dollar, each to the other in hand paid, the receipt of which is hereby acknowledged, and in further consideration of substantial mutual benefits hereby expressly acknowledged to be derived herefrom, the parties hereto agree as follows:

1. The respective parties hereto hereby mutually remise, release and quitclaim unto the other all rights, property or liens held by them under or by virtue of the stock purchase agreement above set forth and any agreement or agreements supplemental thereto, save and except that the purchaser retain the said stock purchased as aforesaid, but only under the conditions herein defined.

2. The Purchaser- hereby acknowledge themselves justly indebted to the Company in the sum of $1,353.20, being the balance of the unpaid purchase price of said stock, with the accrued interest thereon to the date hereof, which aggre- [fol. 206] gate sum, computed to form a new principal, the Purchaser- agree to pay in installments as follows:

Payments	Due	Principal	Interest	Amount
Interest Payment	November 1, 1916	$.....	$128 55	$128 55
1st Deferred Payment	November 1, 1917	169 15	81 19	250 34
2nd Deferred Payment	November 1, 1918	169 15	71 04	240 19
3rd Deferred Payment	November 1, 1919	169 15	60 89	230 04
4th Deferred Payment	November 1, 1920	169 15	50 74	219 89
5th Deferred Payment	November 1, 1921	169 15	40 59	209 74
6th Deferred Payment	November 1, 1922	169 15	30 44	199 59
7th Deferred Payment	November 1, 1923	169 15	20 29	189 44
8th Deferred Payment	November 1, 1924	169 15	10 14	179 29

[fol. 207] All deferred payments bear interest at six per cent from this date.

3. To secure the payment of the aforesaid installments of principal and interest, the Purchaser- hereby grant, bargain, sell and convey to the Company, its successors and assigns forever, all that certain real property situate in the County of Bannock and State of Idaho, described as follows, to-wit: N. W. ¼ of S. E. ¼, in Section 19, of Township 11, South, of Range 37 east, Boise Meridian, containing forty acres, together with all tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, the said land being the land described in said stock certificate No. 162 and the identical and only land upon which the water right represented thereby has or shall become dedicated and be appurtenant.

With respect to the prompt payment of the installments above set forth, time is of the essence of this contract, and in case of any default in the payment of any installment of principal and interest as above set forth, the whole amount of the purchase price may, at the option of the Company, become immediately due and payable, and the Company may at once begin suit to enforce the lien of these presents therefor, and in case of any such suit, the Purchaser- agree to pay, in addition to the costs and disbursements allowed by law, such sum as the court may adjudge reasonable as attorney's fees in such suit or action.

4. The purchaser- agree that to further secure said payments, the shares of stock represented by stock certificate No. 162 in the Portneuf-Marsh Valley Canal Company, Limited, shall be and they are hereby assigned and [fol. 208] transferred to the Company, with power to pledge the same. It is understood and agreed, however, that the Purchaser- may vote said stock as long as *he* shall not be in default with respect to any payments of principal or interest, but in case of such default, the Company and its agents are, while such default continues, hereby authorized and empowered to vote said stock in such manner as it or they may deem proper at all meetings of the stockholders of said Operating Company. It is further agreed that no water shall be delivered to the Purchaser- from said irrigation system while any installment of principal or interest is due and unpaid from the Purchaser- to the Company.

5. The Purchaser- expressly acknowledge that the Company has fulfilled each and every of the obligations by it to be kept and performed under and by virtue, first, of that certain contract dated June 3, 1908, between the predecessors in interest of the Company and the State Board of Land Commissioners; and secondly, of the original stock purchase contract aforesaid or any agreement or agreements supplemental thereto. The Purchaser- hereby expressly waive all claims for damages growing out of the time or manner of the delivery of water from the Company's irrigation system, or any other obligation of the Company imposed by virtue of either of said contracts, and hereby consent that the ownership and control of said system may be forthwith finally turned over to the Operating Company; agrees hereafter to look solely to the Operating Company for the delivery of the water to which *he* may be entitled by virtue of said stock; and hereby release the [fol. 209] Company from any liability with respect to the future delivery of said water.

In witness whereof, the parties have hereunto subscribed their names, and the Company has caused its seal to be affixed the day and year above written in duplicate.

Portneuf-Marsh Valley Irrigation Company, Limited, by Charles S. Davis, Sec. (Corporate Seal.) H. E. Conine, Ruth Conine.

In the presence of Jas. Bowcutt, —— ——, witnesses.

State of Utah,
County of Box Elder, ss:

On this 29th day of March, in the year 1915, before me, James Bowcutt, a Notary Public in and for said State and county, personally appeared H. E. Conine and Ruth Conine, his wife, known to me to the persons whose names are subscribed to the above instrument and acknowledged to me that they executed the same.

Witness my hand and official seal the day and year in this certificate first above written.

James Bowcutt, Notary Public. My commission expires Oct. 22, 1915. (Seal.)

[fol. 210] STATE OF MASS.,
County of Suffolk, ss:

On this 14th day of Oct., 1915, before me, Henry R. Scott, a Notary Public in and for the State and county aforesaid, personally appeared Charles S. Davis, known to me to be the President of the corporation that executed the foregoing instrument and acknowledged to me that such corporation executed the same.

Witness my hand and official seal, the day and year in this certificate first above written.

Henry R. Scott, Notary Public. Commission expires Sept. 21, 1917. (Seal.)

The foregoing contract is hereby approved, and has been registered this 11th day of Nov. 1915.

State Board of Land Commissioners. Heber Q. Hale, Register. (Seal of the Land Board.)

Boise Idaho, —— —, 19—.

For value received, this contract, principal and interest, is hereby assigned and transferred to —— —— by authority of a resolution of the Board of Directors of the Portneuf-Marsh Valley Irrigation Company, Limited.

Portneuf-Marsh Valley Irrigation Company, Limited, by —— ——, President.

Attest: —— ——, Secretary.

[fol. 211] Know all men by these presents: That, acting under and by virtue of an order of the District Court of the Fifth Judicial District of the State of Idaho, in and for Bannock County, made and entered on the 2nd day of October, 1915, in that certain case pending in said court, entitled George T. Hyde and Portneuf-Marsh Valley Canal Company, Limited, a corporation, plaintiffs, vs. Portneuf-Marsh Valley Irrigation Company, Limited, a Corporation, L. C. Rose, Colonial Trust & Savings Bank, Jesse S. Richards and John T. Woodland, defendants, I, as receiver of said Portneuf-Marsh Valley Irrigation Company, Limited, defendant in said action, do hereby ratify and confirm the

above contract and each and every grant, covenant and condition thereof.

I. W. McConnell, Receiver Portneuf-Marsh Valley Irrigation Company, Limited.

Dated November 6th, 1915.

STATE OF IDAHO,
County of Bannock, ss:

On this 6th day of November, in the year 1915, before me, Sever F. Johnson, a notary public in and for said state and county, personally appeared I. W. McConnell, known to me to be the person whose name is subscribed to the above instrument, and known to me to be the receiver of the Portneuf-Marsh Valley Irrigation Company, Limited, and acknowledged to me that he executed the same as such receiver.

Witness my hand and official seal the day and year in this certificate first above written.

Sever F. Johnson, Notary Public in and for Bannock County, Idaho. (Seal.)

[fol. 212] 44459. No. 162. Agreement. Portneuf-Marsh Valley Irrigation Company, Limited, to —— ——. Filed for Record at the request of Edwin Snow at 6 minutes past 3 o'clock P. M., this 18 day of Feby., 1916 and recorded in Book 4 of Agreements page 40 Records of Bannock County, State of Idaho. C. W. Pomeroy, Recorder, by Sidonia Grosse, Deputy. Fee $2.80. Compared. Paged. Indexed.

Stock Certificate Attached to and a Part of Plaintiff's Exhibit C-2

Incorporated under the Laws of the State of Idaho

Number 162. 40 Shares.

Portneuf-Marsh Valley Canal Company, Limited

Capital Stock: $20,000

This is to certify that H. E. Conine is the owner of Forty Shares of the Capital Stock of the Portneuf-Marsh Valley [fol. 213] Canal Company, Limited, transferable on the books of the Company by endorsement hereon.

Each share entitles the owner thereof to receive one-eightieth of a cubic foot of water per acre per second of time for the following described land. N. W. ¼ S. E. ¼ Sec. 19, Twp. 11 S., R. 37 E. B. M. in the County of Bannock, State of Idaho; and this Certificate also entitles the owner to a proportionate interest in the dam, canal, reservoir, and water rights and all other rights and franchises of this Company, based upon the number of shares finally sold, in accordance with the contract between the Portneuf-Marsh Valley Irrigation Company, Limited, and the State of Idaho, dated June 3d, 1908.

In witness whereof the Portneuf-Marsh Valley Canal Company, Limited, has caused this Certificate to be sealed with its Corporate Seal and signed by its duly authorized officers this 24 day of June, 1910.

Portneuf-Marsh Valley Canal Company, Limited, by L. W. Johnson, President.

Attest: Edwin Snow, Secretary. (Corporate Seal.)

(Endorsement:) For value received, — do hereby sell, assign and transfer unto —— —— — shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint —— —— true and lawful attorney, to transfer all the said stock on the books of [fol. 214] the within named Company, with full power of substitution and revocation in the premises. Dated —— —, 19—. H. E. Conine. In the presence of J. W. Maxey. 162. Certificate for forty shares of the capital stock of the Portneuf-Marsh Valley Canal Company, Limited, issued to H. E. Conine, Murray, Iowa. Dated June 24, 1910.

The following list comprises certain Sheriff's Deeds from the Sheriff of Bannock County, Idaho, to Howard W. Brown and John R. Chapin, Trustees, which Deeds were executed and delivered by the Sheriff of Bannock County, Idaho, to the said Howard W. Brown and John R. Chapin, Trustees, by virtue of certain foreclosure proceedings and public sales held thereunder at which the said Howard W. Brown and John R. Chapin, Trustees, purchased the real [fol. 215] property, water rights and shares of stock representing the same, respectively described in said Sheriff's Deeds.

The date of each of said Sheriff's deeds together with the real property, water right and shares of stock therein described are:

Date	Land	Water right No.	Stock cert. No.	No. shares
May 29, 1922,	W. ½ of the N. W. ¼, Sec. 33, Twp. 11 So., R. 37 E. B. M.	16	16	80
June 21, 1923,	S. ½ of the S. E. ¼, Sec. 29, Twp. 11 So., R. 37 E. B. M	17	17	80
Nov. 23, 1920,	S. E. ¼ of the S. W. ¼, Sec. 7, Twp. 11 So., R. 37 E. B. M	23	23	40
June 21, 1923,	W. ½ of the N. E. ¼ Sec. 32, Twp. 11 S., R. 37 E. B. M	37	37	80
June 21, 1923,	E. ½ of the N. W. ¼, Sec. 32, Twp. 11 So., R. 37 E. B. M	39	39	80
May 29, 1922	S. E. ¼ of the S. E. ¼, Sec. 18, and the S. W. ¼ of the S. W. ¼ Sec. 17, Twp. 11 So., R. 27 E. B. M.	X-54	X-54	80
May 29, 1922,	S. ½ of the N. W. ¼, Sec. 4, Twp. 12 So., R. 37 E. B. M	77, 89	77, 89	80
May 29, 1922,	E. ½ of the N. W. ¼, Sec. 30, Twp. 11 So., R. 37 E. B. M	83	83	80
[fol. 216] June 14, 1923,	S. W. ¼ of the N. E. ¼, and the N. W. ¼ of the S. E. ¼, Sec. 30, Twp. 11 So., of R. 37 E. B. M.	84	84	80
May 29, 1922,	Lot 4, Sec. 4, and Lot 1, Sec. 5, all in Twp. 12 South, R. 37 E. B. M	95	95	78 73
May 29, 1922,	The S. ½ of the N. E. ¼, Sec. 19, Twp. 11. So., Range 37 E. B. M	97	97	80
May 29, 1922,	S. W. ¼ of the N. W. ¼, and the N. W. ¼ of the S. W. ¼, Sec. 17, Twp. 11 So., R. 37 E. B. M	120	120	80
June 21, 1923,	S. W. ¼ of the S. W. ¼, Sec. 5, Twp. 11 So., Range 37 E. B. M.	135	135	40

Explanation

The water right number as given in the foregoing list refers to the number of the water contract, providing for the sale of certain shares of stock in the Portneuf-Marsh Valley Canal Company, Ltd., representing water right for the land described in connection with such water right number.

Stock Certificate number given in the foregoing list refers, in each instance, to stock certificate of the Portneuf-Marsh Valley Canal Company, Ltd., which represents the water right appurtenant to the land described in connection with each of such stock certificate numbers as aforesaid.

[fol. 217] Plaintiff's Exhibit D-1

Sheriff's Deed on Foreclosure

This indenture, made this 29th day of May, 1922, between Geo. E. Mabey, the Sheriff of Bannock County, State of Idaho, the party of the first part, and Howard W. Brown and John R. Chapin, Trustees, of Brookline, Massachusetts, parties of the second part, witnesseth:

Whereas, a judgment and decree of foreclosure and sale was rendered and entered in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Bannock, on the 10th day of January, 1921, in an action then pending in said court in favor of Howard W. Brown and John R. Chapin, Trustees, as plaintiffs, and against A. F. Sorstedt, A. F. Daughenbaugh and Lottie S. Daughenbaugh, his wife, and Ella M. Coad, defendants, and an order of sale issued out of and under the sale of the said District Court, reciting the material parts of said judgment and decree, duly attested on the 29th day of March, 1921, and to the Sheriff of Bannock County, State of Idaho, directed, and to Geo. E. Mabey, as such Sheriff, delivered on the 29th day of March, 1921, for execution, commanding and requiring him, as such Sheriff, to proceed to notice for sale and to sell the property in said writ mentioned, and described in said decree as follows, to-wit:

West one-half Northwest quarter (W. ½ N. W. ¼), Section thirty-three (33), Township eleven (11) South Range thirty-seven (37) East of Boise Meridian, containing eighty [fol. 218] (80) acres more or less, the same being situated in Bannock County, State of Idaho; and

That certain water right described as water right No. 16, sold and conveyed by the Portneuf-Marsh Valley Irrigation Company, Ltd., to A. F. Sorstedt, under a written contract to be used upon and to become dedicated and be appurtenant to the lands above described, which said contract was duly recorded in the office of the Recorder of Bannock County, State of Idaho, on the 12th day of February, A. D. 1917, in Book 4 of Agreements, at page 164 thereof; and

Certificate No. 16 for 80 Shares of the capital stock of the Portneuf-Marsh Valley Canal Company, Ltd., which stock represents that certain water right above mentioned, at public auction, in the manner prescribed by the laws of Idaho relating to Carey Act lands, and according to the course and practice of said District Court, and to apply the proceeds of such sale to the satisfaction of said judgment and decree, with interest thereon, and costs, together with Sheriff's fees; and to execute a certificate of sale and deed to the purchaser or purchasers in accordance with the Statutes of Idaho, as aforesaid, and it being further provided in said judgment and decree that any of the parties to the action might become a purchaser at said sale.

Whereas, in compliance with said writ, that on the 25th day of May, 1921, between the hours of 9 o'clock in the morning and 5 o'clock in the afternoon, to-wit: at the hour of 10:15 o'clock in the forenoon of that day, in front of the front door of the county court house in Bannock County, [fol. 219] State of Idaho, and after due and legal notice having been given in the said behalf as by the Statutes of Idaho (relating to Carey Act lands) in such case made and provided, Geo. E. Mabey, Sheriff, duly sold at public auction, all and singular the property above described and in said writ mentioned and described and by said decree directed to be sold to Howard W. Brown and John R. Chapin, Trustees, who were the highest bidders therefor in the sum of $1,777.28, and which sum so bidden by them was the amount of the judgment in the action of said writ, with

interest thereon, and the cost of making the sale of said property and no more. And, thereupon, Geo. E. Mabey, as such Sheriff, made and issued such certificate of sale, as by the laws of Idaho (relating to Carey Act lands) directed, in duplicate, and delivered one to the said purchasers and filed the other in the office of the Recorder for said Bannock County for record, and

Whereas, the period of one year has expired since the date of said sale and no redemption of or for said property, or any part thereof, has been made by the original owners against whom the lien in the action of said judgment and decree was foreclosed, or either of them, nor by a prospective settler desiring to settle upon and use the lands and water right represented by said shares of stock above described, or any part thereof, nor by the defendants in the action of said judgment and decree, or any of them, nor by any other person or persons whatsoever, either under the Statutes of Idaho relating to Carey Act lands, or otherwise,

Now, therefore, this indenture witnesseth: That the said party of the first part, the said Geo. E. Mabey, Sheriff, as [fol. 220] aforesaid, in order to carry into effect the sale so made by him as such Sheriff, as aforesaid, in pursuance of said writ and in conformity to the Statutes in such case made and provided, and also in consideration of the premises and of the sum of $1,777.28 so bidden and paid by the purchasers to said Geo. E. Mabey, Sheriff, as aforesaid, the receipt whereof is hereby acknowledged, hath granted, bargained, sold and conveyed and by these presents doth grant, bargain, sell and convey unto the parties of the second part, and to their heirs and assigns forever, all and singular the above described lands, the water right appurtenant thereto and said shares of stock representing said water right.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

To have and to hold all and singular the above mentioned and described property hereby conveyed, or intended so to be, together with the appurtenances unto the said parties of the second part and their heirs and assigns forever.

In witness whereof, I, Geo. E. Mabey, the party of the first part to these presents, Sheriff as aforesaid, have hereunto set my hand the day and year first above written.

Geo. E. Mabey, Sheriff of Bannock County, State of Idaho.

STATE OF IDAHO,
County of Bannock, ss:

On this 29th day of May, A. D. 1922, before me, R. C. Earley, Clerk of the District Court for County of Bannock, [fol. 221] State of Idaho, personally appeared Geo. E. Mabey, Sheriff of the County of Bannock, State of Idaho, known to me to be the same person whose name is subscribed to the foregoing instrument and acknowledged to me that he, as such Sheriff aforesaid, executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

R. C. Earley, Clerk of the District Court for County of Bannock, State of Idaho, Pocatello, Idaho. (Seal.)

PLAINTIFF'S EXHIBIT NO. E

The following list comprises certain quit claim deeds from certain individuals who contracted to purchase water rights from the Portneuf-Marsh Valley Irrigation Company, Ltd., for the land described in said quit claim deeds and which quit claims were executed and delivered by such contracting parties to W. Rodman Peabody as agent of Brown & Chapin, Trustees, for the purpose of avoiding foreclosure proceedings under said contracts and of finally settling all claims which the said Irrigation Company and its assignees, Howard W. Brown and John R. Chapin, Trustees, might have against the respective grantors in said quit claim deeds.

The following list contains brief description or abstract of each quit claim deed aforesaid, to-wit:

[fol. 222] 1

Fred Mueller and Sophia N. Mueller, to W. Rodman Peabody.

Quit Claim Deed. Dated July 26, 1919. Stock Cert. No. 812 for 10 Shares. Water right No. 812.

Conveys: Lot or tract No. 13 of acreage tracts adjacent to Downey Townsite West of O. S. L. Ry. according to the official plat thereof on file with the County Recorder of Bannock County, Idaho.

2

Mary E. Gregory (formerly Mary Ethel Mock) and Alpheus A. Gregory, her husband, to W. Rodman Peabody.

Quit Claim Deed. Dated June 20, 1921. Stock Cert. No. 21 for 80 Shares. Water Right No. 21.

Conveys: The W. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$ of Sec. 33, Twp. 11 So., Range 37 E. B. M.

3

D. W. Evans and Florence M. Evans, to W. Rodman Peabody.

Quit Claim Deed. Dated July 1, 1919. Stock Cert. No. 22 for 80 Shares. Water Right No. 22.

Conveys: East $\frac{1}{2}$ of the N. E. $\frac{1}{4}$, sec. 32, Twp. 11 So., Range 37 E. B. M.

4

Robert S. Nelson, Jr. and Edna Nelson, to W. Rodman Peabody.

Quit Claim Deed. Dated December 28th, 1920. Stock Cert. No. X-31 for 80 Shares. Water Right No. X-31.

Conveys: The E. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$, in Section 20, Twp. 11 South of Range 37 E. B. M.

[fol. 223]

5

C. E. Layton and Clara H. Layton, to W. Rodman Peabody.

Quit Claim Deed. Dated December 23, 1920. Stock Cert. No. 33 for 80 shares. Water Right No. 33.

Conveys: S. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$, Sec. 29, Twp. 11 South, Range 37 E. B. M.

6

H. A. Weddle and H. M. Weddle, to W. Rodman Peabody.

Quit Claim Deed. Dated January —, 1920. Stock Cert. No. 108 for 39.57 Shares. Water Right No. 108.

Conveys: Lot 3, Sec. 4, Twp. 12 So., Range 37 E. B. M.

7

Lottie L. Cobb, a widow, to W. Rodman Peabody.

Quit Claim Deed. Dated October 4, 1919. Stock Cert. No. 128, for 80 Shares. Water Right No. 128.

Conveys: N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$, Sec. 5, Twp. 12 So., Range 37 E. B. M., and the S. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$, Sec. 32, Twp. 11 So., Range 37 E. B. M.

8

L. A. Trowbridge and Caroline C. Trowbridge, to W. Rodman Peabody.

Quit Claim Deed. Dated October 4, 1919. Stock Cert. No. 129, for 80 Shares. Water Right No. 129.

Conveys: N. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$, N. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$, Sec. 32, Twp. 11 So., Range 37 E. B. M.

[fol. 224] 9

Olivia J. Hanchett, a widow, to W. Rodman Peabody.

Quit Claim Deed. Dated Sept. 20, 1919. Stock Cert. No. X-130, for 80 shares. Water Right No. X-130.

Conveys: N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, Sec. 19 S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$, Sec. 18, all in Twp. 11 South of Range 37 E. B. M.

10

W. B. Astin and Katie E. Astin, to W. Rodman Peabody.

Quit Claim Deed. Dated January 3, 1920. Stock Cert. No. 152, for 40 Shares. Water Right No. 152.

Conveys: The N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Sec. 31, Twp. 11 South, Range 37 E. B. M.

11

Elizabeth H. Burhoe, a widow, to W. Rodman Peabody.

Quit Claim Deed. Dated — day of ——, 1919. Stock Cert. No. 155, for 80 shares. Water Right No. 155.

Conveys: The S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, N. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$, Sec. 18, Twp. 11 South, Range 37 E. B. M.

Explanation

The respective stock certificates referred to in the foregoing abstract, to-wit, stock certificates Nos. 812 (A-12) 21, 22 X-31, 33, 108, 128, 129, X-130, 152 and 155 are certificates issued by Portneuf-Marsh Valley Canal Company, Ltd., and represent the number of shares of its capital stock set [fol. 225] out after each certificate number in the aforesaid abstract.

Water right numbers 812 (A-12) 21, 22, X-31, 33, 108, 128, 129, X-130, 152, and 155 as set out in the foregoing abstract refer, in each instance, to the water contract providing for the sale of shares of stock of the Portneuf-Marsh Valley Canal Company, representing the water right appurtenant to the land described in the same quit claim deed.

Plaintiff's Exhibit E-1

This indenture, Made this 26 day of July, 1919, by and between Fred Mueller and Sophia N. Mueller, husband and wife of Piedmont, Cal., parties of the first part, and W. Rodman Peabody of Boston, Massachusetts, party of the second part, witnesseth:

That in consideration of the sum of $25.00 cash in hand paid, the receipt of which is hereby acknowledged, the said parties of the first part do by these presents grant, remise, release and quitclaim unto the said party of the second part, his heirs and assigns, forever, the following described real property situated in Bannoock County, Idaho, to-wit: Lot or tract No. 13 of acreage tracts adjacent to Downey townsite West of O. S. L. Ry. according to the official plat thereof on file with the County Recorder of Bannock County, Idaho, together with a water right therefor consisting of ten shares of stock of the Portneuf-Marsh Valley Canal Company, represented by stock Certificate No. 812. [fol. 226] Together also with all and singular the tenements hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title and interest whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to the said premises.

To have and to hold, All and singular, the said premises, together with the appurtenances, unto the said party of the second part and to his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Fred Mueller. (Seal.) Sophia M. Mueller. (Seal.)

Signed, sealed and delivered in the presence of Jas. S. Naismith.

STATE OF CALIFORNIA,
County of Alameda, ss:

On this 20 day of July, in the year 1919, before me Jas. S. Naismith, a Notary Public in and for said State, personally appeared Fred Mueller and Sophia N. Mueller, his wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same. In witness whereof, I have hereunto set my hand and affixed *by* official seal, the day and year in this certificate first above written.

Jas. S. Naismith, Notary Public, residing at Oakland, Cal. My commission expires Aug. 1921. (Seal.)

[fol. 227] PLAINTIFFS' EXHIBIT No. H

State of Idaho,

Department of State

I, F. A. Jeter, Secretary of State of the State of Idaho, and legal custodian of the records pertaining to corporations disqualified to transact business in the State of Idaho, do hereby certify that the annexed is a full, true and complete copy of the certified list of corporations whose charters were forfeited on the 2d day of December, A. D. 1918, issued by the Secretary of State of the State of Idaho on the 3d day of December, 1918, in so far as it pertains to the Portneuf-Marsh Valley Canal Company, Limited.

I further hereby certify that said Portneuf-Marsh Valley Canal Company, Limited, was reinstated on the 14th

day of September, 1921, and is at the present time a corporation in good standing in the State of Idaho.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State. Done at Boise, the Capital of Idaho, this twenty-eighth day of September, A. D. 1923.

F. A. Jeter, Secretary of State. (Seal of the State of Idaho.)

[fol. 228] State of Idaho,

Department of State

I, W. T. Dougherty, Secretary of State of the State of Idaho, do hereby certify that the annexed is a full, true and complete transcript of a list of the names of all domestic corporations whose charters were forfeited on December 2nd, 1918, and of all foreign corporations which forfeited their right to do business in the State of Idaho through failure to pay within the time prescribed, the annual corporation license tax for the fiscal year ending June 30, 1919, and penalty for delinquency or in lieu thereof file in this department annual statements showing such corporations to be exempt from the payment of said tax.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State. Done at Boise City, the Capital of Idaho, this Third day of December in the year of our Lord one thousand nine hundred and eighteen and of the Independence of the United States of America the One Hundred and Forty-third.

W. T. Dougherty, Secretary of State. (Great Seal of the State of Idaho.)

Portneuf-Marsh Valley Canal Company, Limited.

(Endorsed:) List of corporations whose charters were [fol. 229] forfeited on Dec. 2, 1918. Department of State, Secretary's Office. Filed this 3rd day of Dec., 1918. Records of the State of Idaho.

W. T. Dougherty, Secretary of State, by S. F. Hartman, Chief Clerk.

PLAINTIFFS' EXHIBIT NO. 1

Boise, Idaho, March 25, 1915.

Honorable State Board of Land Commissioners, Boise, Idaho.

GENTLEMEN: The undersigned, Portneuf-Marsh Valley Irrigation Company, Limited, and Portneuf-Marsh Valley Canal Company, Limited, hereby jointly petition your Honorable Board to authorize and approve the final acceptance by the State of Idaho for the use and benefit of the Portneuf-Marsh Valley Canal Company, Limited, and its stockholders of the irrigation system constructed by the undersigned Irrigation Company under the terms of its contract of June 3rd, 1908.

Your Honorable Board is advised that the signers hereof are in complete harmony with respect to the requested action, all former difficulties having been settled and compromised by the parties hereto, upon the basis set out in the accompanying contract, marked "Exhibit A," and hereto attached.

Your Honorable Board is further advised that at a special meeting of the stockholders of the undersigned Settlers Company, duly called and held on the 13th day of March, [fol. 230] 1915, at Downey, Idaho, the question of the acceptance of the irrigation system was submitted to the stockholders of said company, each settler voting his own stock either in person or by proxy, the voting power of the Irigation Company in respect to said stock having long ago been waived; that at such meeting there were present stockholders representing 8,732½ shares of stock out of a total outstanding stock issue of 12,240; that of the 8,732½ shares of stock represented at said meeting 8,210½ shares of stock were voted in favor of the acceptance of said system; that of the 552 shares voting against said acceptance a considerable portion thereof is now favorable to this acceptance.

Your Honorable Board is further advised that attached hereto as "Exhibit B" is a petition signed by practically all the settlers resident upon said tract; that there are not to exceed five resident and available landowners upon said tract who are entitled to water from said irrigation system

whose names are not attached to the said petition, and that such landowners and water users whose names are not attached to said petition do now own or control to exceed 320 acres of land or shares of water rights.

Wherefore, your petitioners pray that, in as much as it is desirable that the question of the future ownership and control of said irrigation system should be definitely settled prior to the beginning of the irrigation season, your [fol. 231] Honorable Board take speedy and favorable action upon this petition.

Portneuf-Marsh Valley Irrigation Company, Limited, by Edwin Snow, Atty. Portneuf-Marsh Valley Canal Company, Limited, by George T. Hyde, President.

Exhibit A to Plaintiff's Exhibit No. I

Contract

This agreement, made this — day of ——, 1915, between the Portneuf-Marsh Valley Irrigation Company, Limited, an Idaho corporation (hereinafter called the Construction Company), party of the first part, and Portneuf-Marsh Valley Canal Company, Limited, an Idaho corporation (hereinafter called the Operating Company), party of the second part;

Witnesseth: Whereas, on June 3, 1908, the predecessors in interest of the Construction Company above named entered into a contract with the State Board of Land Commissioners of Idaho, prviding for the construction of a system of irrigation works in Bannock County, Idaho, and for the sale by the said Construction Company of water rights or shares therein, and providing for a method of transferring the ownership and control of said irrigation works from the said Construction Company to the purchasers of said shares, and,

Whereas, in pursuance of such method of transferring ownership and control of said irrigation works, there has been organized, as provided in said contract under the laws [fol. 232] of the State of Idaho, a corporation called the Portneuf-Marsh Valley Canal Company, Limited, (the

second party to this agreement and hereinafter called the Operating Company), and the Construction Company has heretofore sold and issued to the several purchasers of water rights in its said irrigation system shares of stock of such Operating Company equal in number to the acres of land for which water rights were purchased by such purchasers respectively, and;

Whereas, the said Construction Company has now, at the date hereof, substantially completed the said irrigation works in accordance with its said contract with the State of Idaho, and the plans and specifications filed as therein provided with the State Engineer of Idaho, and approved by him and the said State Board of Land Commissioners and the said works and the whole thereof are now and have been since the beginning of the irrigation season of 1912 so far completed as to permit the operation there for the delivery of water to purchasers of water rights; and,

Whereas, by an agreement in writing, dated March 19, 1913, between the parties to this agreement, the Operating Company, with the approval of the State Board of Land Commissioners, took over the management, control and operation of such irrigation system, the said agreement, providing that, notwithstanding the acceptance by the said Operating Company of the said irrigation system as fully completed and the taking of it over by said Operating Company for operation and maintenance, the Construction Company should nevertheless do and perform certain repairs, alterations and construction work thereon; and,

Whereas, the Construction Company has now substanti- [fol. 233] ally completed the said repairs, alterations and constructions work, as provided in the said agreement of March 19, 1913, and said Operating Company is now willing to accept and receive the said system in its entirely as fully completed in accordance with the terms of the contract aforesaid, between the predecessors in interest of the Construction Company and the State of Idaho, dated June 3, 1908, and to recognize that the obligations of the said Construction Company under the terms of said contract aforesaid are now fully fulfilled and at an end, and that with the expenditure of the $31,000 hereinafter provided for, water can be made avaliable for the acreage of land hereinafter specified.

Now, therefore, in consideration of the premises aforesaid and the mutual covenants and conditions herein contained to be kept and performed by the respective parties hereto, it is mutually agreed as follows:

(1) The Operating Company undertakes to secure within thirty (30 days from this date the final acceptance of said irrigation system in its entirety by the State Board of Land Commissioners and the State Engineer, and the full satisfaction and cancellation of the bond conditioned upon the fulfillment of the said contract aforesaid, and hereby accepts and receives said system on behalf of its stockholders (together with the payment of $31,000 hereinafter specified) as a full compliance of the Irrigation Company with the terms of the state contract aforesaid.

(2 The Construction Company agrees that it will, in the case of all such stockholders of the Operating Company as [fol. 234] shall sign and execute in form approved by the Construction Company a new water contract by the terms of which such stockholders recongnize the complete fulfillment by the Construction Company of all its obligations under the said state contract, and waive all claims for crop damages or other claim or demand against the Construction Company by reason of the time or manner of the delivery of water heretofore, enter into such contracts with such stockholders, whereby the principal and interest due under the several individual water contracts of such stockholders shall be computed to ascertain the amount of principal and interest unpaid on April 1, 1915, interest being computed from April 1, 1912, which computed amount as of the date April 1, 1915, shall form the principal sum payable on such water contracts, and upon which interest shall begin to run from that date, and which principal sum shall be payable in eight (8) equal annual installments, beginning November 1, 1917, the first interest payment being payable November 1, 1916, and annually thereafter.

(3) The Construction Company aforesaid agrees that at any time prior to November 1, 1917, if the Operating Company, or the stockholders thereof, shall have caused to be organized an irrigation district under the provisions of Title XIV of the Political Code of Idaho, or any amendments thereto, which irrigation district shall embrace all the land

covered by agreements between the Construction Company and the stockholders of the Operating Company for the sale of water rights, with not less than 1,200 acres additional lands, and shall have caused to be issued in all respects and according to law valid six per cent (6%) bonds of such district, which bonds shall have been approved by [fol. 235] decree of a court of competent jurisdiction which shall have become final by appeal or otherwise, the Construction Company will surrender for cancellation all such outstanding water contracts then subsisting between it and the owners of land within said District, and convey to such district all its remaining interest in the unsold water of said irrigation system (subject, however, to the reservation hereinafter mentioned in case such district shall contain less than 14,000 acres), and accept in lieu thereof bonds of the district aforesaid at the par value thereof, to the aggregate amount of the total principal and interest then remaining unpaid upon such water contracts, plus $50.00 per acre in such bonds at par for all land included within said district up to 1,200 acres for which water rights shall not have been sold by the Construction Company. Provided, however, that if the amount of land included in said district for which water rights have not heretofore been sold by the Construction Company shall exceed 1,200 acres, then the Construction Company agrees to accept bonds of the district as aforesaid at par in an additional amount equal to $25.00 per acre for such excess acreage over 1,200 acres. It is understood and agreed that in case such district is formed to include less than 14,000 acres, any conveyance to the district shall reserve to the Construction Company the right to the further sale of water rights and the proceeds thereof up to the full aggregate acreage of 14,000 acres. If the said district shall be organized as herein provided and shall tender to the Construction Company valid bonds under the conditions herein set forth, the Construction Company, at the time it surrenders its water contracts and accepts such bonds in lieu thereof, agrees to pay to the district in [fol. 236] cash a sum sufficient to cover the actual and necessary costs of organizing the district but not in excess of $2,500. The Construction Company further agrees to accept cash at par, plus accrued interest, for such district bonds as it may receive under the terms hereof, at any

time after five years from the date when it shall receive such bonds.

It is the intent of this paragraph that the Construction Company shall have the right to sell a total of 14,000 acres of water rights, but the Construction Company agrees that if, prior to the issue of District Bonds as herein provided, the sale of water rights shall exceed a total of 13,200 acres in good standing, that thereafter the Construction Company will issue to the Operating Company, all or any part of the remaining eight hundred acres which the Construction Company is entitled to sell under this agreement at the rate of $25.00 per acre, if, when and as the Operating Company shall demand, the same to be applied to lands under the irrigation system, but this provision shall not operate to prevent the sale of the said eight hundred acres of water rights by the Construction Company provided purchasers can be found by the Construction Company in advance of the demand for the said shares by the Operating Company.

(4) The Construction Company agrees to pay to the Operating Company the sum of $31,000, to be expended by the Operating Company in betterments and repairs and completion of said irrigation system, said sum to be paid in two installments of $15,500 each, one installment to be payable immediately upon the final approval and acceptance of said system in its entirety by the State Engineer and the [fol. 237] State Land Board, as provided in the state contract; the second installment to be payable upon demand of the Operating Company at any time after October 1, 1915. The Operating Company agrees to so expend the said sum of $31,000 in betterments and repairs and completion as aforesaid so as to provide an adequate system for the irrigation of 14,000 acres of land at the duty of water and under the terms and conditions defined in the state contract aforesaid, and agrees to operate said system and deliver water to all those entitled thereto under the terms and conditions of any contracts heretofore or hereafter made between the Construction Company and the Owners of land susceptible of irrigation from said system. The Operating Company expressly undertakes and agrees to hold the Construction Company harmless from any claim or demand growing out of the construction or operation

of said irrigation system, or any failure to deliver water to those entitled thereto, it being the intent of this agreement that the Operating Company, in so accepting and operating said system, is in no manner acting as an agent of the Construction Company, but is so accepting said irrigation system and will so operate it for and on behalf of the owners thereof, to-wit, the stockholders of said Operating Company.

(5) The Construction Company after the final acceptance of said system by the State Engineer and the State Board of Land Commissioners aforesaid, agrees to convey on or before January 1, 1916, to the Operating Company, by good and sufficient deed, the said irrigation system in its entirety, with all water rights, easements and property owned and used by Construction Company in connection therewith. It is understood that such conveyance shall be [fol. 238] subject to a certain mortgage or deed of trust running to the Colonial Trust & Savings Bank of Chicago, Illinois, such mortgage being recorded in Book — of Mortgages, at page —, of the records of Bannock County, Idaho. It is further understood and agreed that if, at the time of such conveyance, there shall be outstanding any liens or judgments operating as liens upon said property, that the Construction Company shall afford security by a good and sufficient bond to discharge such liens when the amount thereof shall have been finally determined; provided, however, that in the case of any judgment liens, the filing of a supersedeas bond on appeal in the court wherein such judgment is of record shall be a sufficient compliance with the above provision as to security. The Construction Company further agrees that it will, prior to said conveyance, procure and assign to the Operating Company a complete release from all past and future damages with respect to certain lands along the Portneuf River, heretofore flooded, or with respect to which it is claimed by the owners thereof that they will be flooded by the operation of said irrigation system, the said lands being the following, to-wit:

The north half of the northeast quarter of Section Twenty-six (26); the southeast quarter of the southeast quarter of Section Twenty-three (23); the northwest quarter of the northwest quarter of Section Twenty-five (25);

all in Township Seven (7) south, Range Thirty-eight (38) E. B. M., in Bannock County, Idaho, belonging to Stephen D. Grimm.

The southeast quarter of the southwest quarter of the southwest quarter of the southeast quarter of Section [fol. 239] Twenty-three (23), Township Seven (7) south, Range Thirty-eight (38) E. B. M., in Bannock County, Idaho, belonging to Walter J. Kelly.

Also flooding privileges with respect to certain lands in the vicinity of the diversion dam connected with the said irrigation system, located near Topaz, Bannock County, Idaho, described as follows: Lots Three (3) and Four (4) and north half of northwest quarter Section Twenty-three (23), Township Nine (9) south, Range Thirty-seven (37) E. B. M., belonging to O. E. Exum.

Also Lot One (1) and northeast quarter northeast quarter, Section Twenty-two (22), Township Nine (9) south, Range Thirty-seven (37) E. B. M., belonging to W. R. Godfrey and Spencer G. Godfrey.

Also Lots One (1) and Two (2) and north half of the northeast quarter, Section Twenty-three (23), Township nine (9) south, Range Thirty-seven (37) E. B. M., belonging to David A. M. Martin.

The Construction Company further covenants to hold the Operating Company harmless from any foreclosure of the trust deed before mentioned, running to the Colonial Trust & Savings Bank, but this covenant shall be binding upon the Construction Company only in the event of the prompt payment by the several stockholders of the Operating Company of the principal and interest due upon their several stock or water right purchase agreements according to the terms thereof, or, in the case of purchasers executing the new agreements mentioned in Paragraph 2 hereof, then according to the terms of such new agreements.

And it is especially understood and agreed between the [fol. 240] parties that the Construction Company shall be under no other or further obligations with respect to any matter or thing except as herein expressly set forth.

(6) It is expressly agreed between the parties hereto that the Construction Company, notwithstanding the final taking over of the irrigation system by the Operating Com-

pany, shall have the right to sell water rights in said system and shares of stock in said Operating Company, representing said water rights, until all the remaining unissued shares of said Operating Company (up to the amount of 14,400 shares, are disposed of by it. The Construction Company may, if it so elects, install a pumping plant for the irrigation of lands above the present gravity canal of the said system, taking the water from such gravity canal to irrigate such land, and said Operating Company agrees that it will, upon the request of the Construction Company, from time to time, cause its president and secretary to issue shares of stock in each Operating Company to the purchasers of water rights, for such lands as may be susceptible of irrigation from such pumping plant, or additions or extensions of the irrigation systems at present constructed, in accordance with the provisions of Section 7-A of Article Five of the By-Laws of the Operating Company, and such By-Laws shall not be subject to repeal or amendments within ten years unless the consent of the Construction Company to such repeal or amendment is first obtained in writing. It is expressly agreed, however, that the Construction Company shall not sell any water rights either under the system as constructed, or under any future extensions or additions thereto, including the pumping plant, in excess of fourteen thousand (14,000) acres.

[fol. 241] (7) The Operating Company expressly covenants and agrees that the unissued stock in said company shall be held subject to the order of the Construction Company and shall be issued to or at the request of said Construction Company, to be by it delivered to purchasers of water rights, in such manner and on such terms as said Construction Company may deem proper. Such stock, while in the hands of the said Construction Company, before sale to water users and before applied to or made appurtenant to land, shall have no voting power and shall not be subject to any tax, assessment or charge of any kind made or levied by such Operating Company but shall, for all purposes, be regarded until so issued, applied and made appurtenant as unissued stock of said Operating Company, and all shares in such Operating Company shall be held subject to the rights of the Construction Company, as provided in the

contract between the said Construction Company and the purchasers of shares, and ss provided in the contract between the said Construction Company and the State of Idaho, until the several installments of the purchase price due such company, its successors or assigns, shall have been fully and finally paid. The said Operating Company agrees that upon being notified, under oath, by the Construction Company, its successors or assigns, that any stockholder in the said Operating Company has defaulted in his payments or any of them to be made under his contract of purchase of water rights pursuant to which stock in said Operating Company was issued, no water from the canal of said Operating Company or any of its laterals shall be delivered to such stockholder, or for the use or benefit of the land described in such stock certificate, until the amount [fol. 242] so due the Construction Company, its successors or assigns, has been fully paid or otherwise adjusted to the satisfaction of such company, its successors or assigns. The Operating Company expressly agrees that no amendment, alteration or repeal shall be made by either the stockholders or the Board of Directors of the following sections of Article 5 of its By-Laws, to-wit: Section- 5, 6, 7, 8 and 9, in so far as the rights or interests of the said Construction Company may be affected, without the consent of such company in writing.

In witness whereof, the parties hereto, by their respective officers, hereunto duly authorized by appropriate resolutions of the Board of Directors of each company, at a meeting duly and legally called and held for that purpose, have caused their respective corporate names of the parties hereto to be subscribed and the respective corporate seals to be affixed the day and year first above written.

Portneuf-Marsh Valley Irrigation Company, Limited, by ——— ———, President. Attest: ——— ———, Secretary. Portneuf-Marsh Valley Canal Company, Limited, by ——— ———, President. Attest: ——— ———, Secretary.

[fol. 243] EXHIBIT B TO PLAINTIFFS' EXHIBIT NO. 1

Downey, Idaho, March, 1915.

Hon. State Board of Land Commissioners, Boise, Idaho:

The Portneuf-Marsh Valley Irrigation Company has reached a complete settlement with the Settlers Operating Company, and with practically all the resident land-owners under its system. In pursuance of this settlement we hereby petition your honorable Board to finally accept the said system as provided in the contract between the Irrigation Company and the State, to discharge and release the bonds given by the Company to issue the fulfillment of said contract.

C. B. Hancock, T. R. Bennett, Christian Dolder, Ralph E. Bennett, W. O. Haldeman, C. K. Hensman, C. Leacher, J. S. Hyde, C. W. Hancock, D. W. Christensen, W. H. Chester, M. V. Burton, F. G. Robinson, John C. Owen, C. M. Brownlee, Wm. J. Bybee, T. W. Bennett, Joseph Wese, Jesse S. Richards, Loine Criddle, J. A. Fitts, J. H. Hartvigsen, George T. Hyde, A. R. Perkins, William Lamensen, Ira Goff, Frank B. Flint, C. D. McCormick, C. E. Layton, John H. Dyson, O. P. Menill, Bird Clegg, W. H. Coffin, Mark L. Johnson, J. S. Welch, John L. Dahlke, R. H. Palmer, J. S. Hartvigsen, L. T. Whitaker, Jeter Christensen.

[fol. 244] Downey, Idaho, March, 1915.

Hon. State Board of Land Commissioners, Boise, Idaho:

The Portneuf-Marsh Valley Irrigation Company has reached a complete settlement with the Settlers Operating Company, and with practically all the resident land-owners under its system. In pursuance of this settlement we hereby petition your Honorable Board to finally accept the said system as provided in the contract between the Irrigation Company and the State, to discharge and release

the bond given by the Company to insure the fulfillment of said contract.

J. J. Robinson, Nilo O. Pehrson, Jos. A. Brim, N. S. Coffin, Frederick L. Bomes, Theo. Britton, John E. Clegg, Annee Kelly, Andrew J. Newbold, N. W. Fauteck, William M. Underwood, W. I. Layton, Alvin C. Hancock, C. H. Norton, W. B. Astin, R. H. Christensen, Harold P. Richards, John Anderson.

Downey, Idaho, March, 1915.

Hon. State Board of Land Commissioners, Boise, Idaho:

The Portneuf-Marsh Valley Irrigation Company has reached a complete settlement with the Settlers Operating Company, and with practically all the resident land-owners under its system. In pursuance of this settlement we hereby petition your Honorable Board to finally accept the said system as provided in the contract between the Irrigation Company and the State, to discharge and release the bond given by the Company to insure the fulfillment of said contract.

[fol. 245] F. H. Berg, O. C. Wiekes, Chas. H. Overton, N. S. Pond, M. P., John W. Aldred, L. C. Farr, Lars W. Johnson, L. G. Farr, Jr., Eve Emma Statedale, Harold E. Tripp, Heriot Riddle, John C. Criddle, Thomas M. Edwards, O. W. Bishop, Thomas Jenkins, H. A. Weddle.

Downey, Idaho, March, 1915.

Hon. State Board of Land Commissioners, Boise, Idaho:

The Portneuf-Marsh Valley Irrigation Company has reached a complete settlement with the Settlers Operating Company, and with practically all the resident land-owners under its system. In pursuance of this settlement we hereby petition your honorable Board to finally accept the said system as provided in the contract between the Irrigation Company and the State, to discharge and release the bond given by the Company to insure the fulfillment of said contract.

Peter W. Olson, Martha A. Mese, S. F. Johnson, John H. Dyson, Leo V. Johnson.

Downey, Idaho, March, 1915.

Hon. State Board of Land Commissioners, Boise, Idaho:

The Portneuf-Marsh Valley Irrigation Company has reached a complete settlement with the Settlers Operating Company, and with practically all the resident land-owners under its system. In pursuance of this settlement we hereby petition your Honorable Board to finally accept the said system as provided in the contract between the Irri- [fol. 246] gation Company and the State, to discharge and release the bonds given by the Company to insure the fulfillment of said contract.

L. D. Brown, Ernest E. Susong, C. C. Richards, J. H. Byington.

Department of Reclamation,

State of Idaho

Boise, October 1, 1923.

I hereby certify that the foregoing is a full, true and correct copy of a certain joint petition of the Portneuf-Marsh Valley Irrigation Company, Ltd., and Portneuf-Marsh Valley Canal Company, Ltd., filed with the State Board of Land Commissioners, March 26, 1916, praying for the final acceptance by the State of the irrigation works constituting the Portneuf-Marsh Valley Carey Act Project, and that the original of said petition is on file in my office among the records thereof, which records are in my custody and under my control.

W. G. Swendsen, Commissioner of Reclamation. (Dept. Rec. Seal.)

PLAINTIFFS' EXHIBIT NO. J

The joint petition of the Portneuf-Marsh Valley Irrigation Company, Limited, and the Portneuf-Marsh Valley Canal Company, Limited, accompanied by the petition of the settlers upon the Portneuf Project, coming on for consideration, the representatives of the settlers and the company both being present, the following resolution was adopted:

[fol. 247] Whereas, the Portneuf-Marsh Valley Irrigation Company, Limited, and the Portneuf-Marsh Valley Canal Company, Limited, have presented a petition praying for the final acceptance by the State of the Portneuf-Marsh Valley Irrigation System, constructed under the terms of the contract entered into between the State and said Company, dated June 3rd, 1908, and

Whereas, it appears from said petition that the said Irrigation Company and the settlers have come to a full understanding and agreement with reference to the final acceptance of said Irrigation System, and that the said system is substantially completed and that, in lieu of further work upon said system, it has been agreed between the settlers and the said Irrigation Company that the Construction Company shall pay over to the Operating Company the sum of $31,000, to be expended in improvements and repairs upon said system, and that said arrangement is satisfactory to the said Canal Co pany and to practically all the settlers upon said project;

Now, therefore, be it resolved, That the said Irrigation System, be and it hereby is accepted; that the Irrigation Company be discharged from all further liability under the said contract dated June 3rd, 1908, and that the bond of the Company, conditioned upon the fulfillment of said contract, be and it hereby is released and exonerated.

Upon roll call the resolution was adopted by unanimous vote.

[fol. 248] Department of Reclamation,

State of Idaho

Boise, Oct. 1, 1923.

I hereby certify that the foregoing is a full, true and correct copy of the Resolution adopted by the State Board of Land Commissioners of the State of Idaho, at a meeting duly called and held on March 21, 1915, according to the record of said meeting, found in Book Three, Minutes of State Board of Land Commissioners, Chapter 325, which original record is in my custody and under my control.

W. G. Swendsen, Commissioner of Reclamation.
(Dept. Rec. Seal.)

PLAINTIFFS' EXHIBIT No. K

Admitted

Department of Reclamation,

State of Idaho

I hereby certify that the following documents are full, true and correct copies of Carey Act Minutes of the Portneuf-Marsh Valley Irrigation Company's project, of even date, the originals of which are on file in the office of the Department of Reclamation, among the records thereof, which records are in my custody and under my control.

W. G. Swendsen, Commissioner of Reclamation.
(Dept. Rec. Seal.)

June 24, 1918.

Jesse S. Richards, Secretary of the Portneuf-Marsh Valley Canal Company, being present and requesting that [fol. 249] steps be taken by the Board for the cancellation of certain entries under the Portneuf-Marsh Valley Project on account of the fact that the entrymen had not complied with the law and rules and regulations of the Board with respect to cultivation and residence and the submission of annual or final proof, and the facts in connection with such entries being made to appear by affidavit.

Now, therefore, be it resolved that the Register of the Land Board be and he is hereby instructed to send out by registered mail to the last known postoffice address of the persons shown on the following list as shown by the records of this Board, notices to such persons to show cause on or before Friday, August 30, 1918, why their several entries should not be cancelled for failure to comply with the provisions of the law and the rules of the Land Board with respect to such entries.

Cont. No. 35, G. E. Kent, Rutland, Vermont. E. ½ S. E. ¼, S. 32, T. 11 S., R. 37 E.

Cont. No. 104, John H. Moyes, Ogden, Utah. S. E. ¼ S. W. ¼ S. 32, T. 11 S., R. 37 E.

Cont. No. 123, Geo. A. Nixon, Gibbons, Nebr. S. E. ¼ S. W. ¼ and S. W. ¼ S. E. ¼ S. 12, T. 11 S., R. 36 E.

Cont. No. 141, O. M. Engdahl, Salt Lake City, Utah. E. ½ N. E. ¼, S. 4, T. 12, S., R. 37 E.
Cont. No. 143, W. A. Webster, Livingston, Mont. N. E. ¼ N. W. ¼ S. 24, T. 11 S., R. 36 E.
Cont. No. 149, C. O. Reynolds, 208 S. La Salle St. Chicago, Ill. E. ½ N. W. ¼, S. 6, T. 11 S., R. 37 E.
Cont. No. 162, H. E. Conine, Honeyville, Utah. N. W. ¼ S. E. ¼, S. 12, T. 11, S. R. 36 E.
Cont. No. 168, Jos. S. Morrison, Downey, Idaho. N. E. ¼ N. E. ¼, S. 1, T. 11 S., R. 36 E.
[fol. 250] Cont. No. 169, Herman Anderson, Swan Lake, Idaho. W. ½ N. E. ¼, S. 4, T. 12 S., R. 37 E.
Cont No. 172, Guy C. Eaton, Stanford, Texas. S. E. ¼ N. E. ¼, S. 14, T. 11 S., R. 36 E.
Cont. No. 176, F. W. Blue, Pocatello, Idaho. N. W. ¼ N. W. ¼, S. 13, T. 11 S., R. 36 E.
Cont. No. 177, F. Lee McDonough, Waukegan, Ill. N. W. ¼ S. E. ¼ and the N. E. ¼ S. W. ¼, S. 1, T. 11 S., R. 36 E.
Cont. No. 67, Chas. H. Overton, Downey, Idaho. E. ½ N. W. ¼, S. 13, T. 11 S., R. 36 E.
Cont. No. 69, J. W. Aldred Pocatello, Idaho. N. W. ¼ S. W. ¼ and S. W. ¼ N. W. ¼, S. 13, T. 11 S., R. 36 E.
Cont. No. 55, E. E. Gillespie, Boise, Idaho. W. ½ N. W. ¼, S. 20, T. 11 S., R. 37 E.
Cont. No. 118, E. E. Gillespie, Boise, Idaho, N. E. ¼ N. E. ¼, S. 19, T. 11 S., R. 37 E.

B. 4—P. 359.

August 13, 1917.

The sixty-day notice given Charles W. Woody, Entry No. 150, Portneuf-Marsh Valley Irrigation Company, having expired the entry was ordered cancelled.

Book 4—page 168.

November 29, 1918.

The following resolution introduced by Auditor Van Deusen was passed unanimously by the Board:

Whereas, on the 16th day of September, 1918, the Board Cancelled certain entries upon the Portneuf-Marsh Valley Irrigation project, and

Whereas, it is to the interest of said project that said lands be resold,

[fol. 251] Now, therefore, be it resolved, that the water rights for the lands embraced in the list of lands so cancelled may be resold by the Company at a price not to exceed $55.00 acre.

Book 4—Page 412.

PLAINTIFFS' EXHIBIT L

Department of Reclamation,

State of Idaho

I hereby certify that the following documents are full, true and correct copies of Carey Act minutes of the Portneuf-Marsh Valley Irrigation Company's Project, of even date, the originals of which are on file in the office of the Department of Reclamation, among the records thereof, which records are in my custody and under my control.

W. G. Swendsen, Commissioner of Reclamation.
(Seal of Dept. Rec.)

September 16, 1918.

The following entries under the Portneuf-Marsh Valley Irrigation Company were ordered cancelled, sixty days notice have been given:

Entry No. 35, Duane E. Kent.
Entry No. 55, E. E. Gillispie.
Entry No. 67, C. H. Overton.
Entry No. 69, John W. Alldred.
Entry No. 104, John H. Moyes.
Entry No. 118, E. E. Gillispie.
Entry No. 123, Geo. A. Nixon.
[fol. 252] Entry No. 141, O. M. Engdahl.
Entry No. 143, Wm. A. Webster.
Entry No. 149, Chas. O Reynolds.
Entry No. 162, H. E. Conine.
Entry No. 164, B. A. C. Norstrom.
Entry No. 168, Jos. S. Morrison.
Entry No. 169, Norman Anderson.
Entry No. 172, Guy C. Eaton.
Entry No. 176, Frank W. Blue.
Entry No. 177, R. Lee McDonough.

Book 4—Page 380.

Department of Reclamation

Carey Act Minutes

October 10, 1919.

In re Portneuf-Marsh Valley Project—Cancellation of Entries

Whereas, the proper sixty-day notice to show cause why the respective entries should not be cancelled for failure to submit proof thereon as provided by the Carey Act law and regulations pertaining thereto to each of the following entrymen, to-wit:

No. 32, A. K. Dahlen American Falls. S. W. ¼ S. W. ¼ Sec. 32, T. 10 S., R. 37 E. B. M.
No. 41, Anna R. Todd, Ft. Wayne, Ind. N. W. ¼ S. W. ¼, S. W. ¼ N. W. ¼ Sec. 32, T. 10 S., R. 37 E. B. M.
No. 45, Harry C. Taylor, Avoka, Iowa. S. W. ¼ S. E. ¼, Sec. 17, N. W. ¼ N. E. ¼ Sec. 20, T. 11 S., R. 37 E. B. M.
No. 52, T. C. Lawlor, Hastings, Neb. E. ½ S. E. ¼ Sec. 19, T. 11 S., R. 37 E. B. M.
No. 165, D. W. Conine, Murray, Iowa. N. ½ N. E. ¼ Sec. 13, T. 11 S., R. 36 E. B. M.

[fol. 253] Whereas, none of the above named entrymen have shown cause why their entries should not be cancelled and the sixty-day period having expired,

Now, therefore, it is ordered that the above entries should be, and the same are hereby cancelled.

W. G. Swendsen, Commissioner of Reclamation.

Attest: ——— ———, Carey Act Clerk.

Department of Reclamation, State of Idaho

Carey Act Minutes

October 25, 1919.

In re Portneuf-Marsh Valley Project—Cancellation Sleeper Entry No. 158

Whereas sixty days' notice to show cause why the following entry should not be cancelled for failure to make proof of reclamation as provided by the rules and regulations of

this department, to-wit: Entry No. 158 on the Portneuf-Marsh Valley Project, Finley Page Sleeper, entryman, embracing the Southwest Quarter of the Southeast Quarter and the Southeast Quarter of the Southwest Quarter of Section 1, Township 11 South, Range 36 E. B. M.; and

Whereas, said notice was mailed to said entrymen under date of August 14, 1919; and

Whereas, said entryman has not shown cause why his said entry should not be cancelled:

[fol. 254] Now, therefore, it is ordered that said above described entry be and the same is hereby cancelled.

W. G. Swendsen, Commissioner of Reclamation.

Attest: Sarah M. Tage, Carey Act Clerk.

Department of Reclamation

Carey Act Minutes

May 26th, 1921.

In re Portneuf-Marsh Valley Irrigation Project—Cancellation of Entry No. 170, Mrs. Georgia M. Stateler

Whereas, under date of September 30th, 1920, a sixty-day notice prepared in accordance with the rules and regulations of this Department was forwarded to Mrs. Georgia M. Stateler, allowing her sixty days within which to show cause why her Carey Act entry covering the Northwest Quarter of the Northeast Quarter of Section 31, Township 10 South, Range 37 East, in Portneuf-Marsh Valley Irrigation project should not be cancelled; and

Whereas, the said sixty day period has long since expired and no showing has been made by the said entrywoman;

Now, therefore, it is hereby ordered that in view of these conditions the said entry of Georgia M. Stateler covering the Northwest Quarter of the Northeast Quarter of Section 31, Township 10 South, Range 37 east, Boise Meridian, [fol. 255] in the Portneuf-Marsh Valley Project be and the same is hereby cancelled and held for naught.

W. G. Swendsen, Commissioner of Reclamation.

Attest: Freda Reynolds, Carey Act Clerk. (Seal.)

Department of Reclamation

Carey Act Minutes

In re Portneuf-Marsh Valley Project, Cancelling Entries 55 and 118, in name of E. E. Gillespie

Whereas, under date of March 22nd, 1922, a notice was sent by registered mail to E. E. Gillespie, entryman of record of entries Nos. 55 and 118 on the Portneuf-Marsh Valley Project embracing the West Half of the Northwest Quarter of Section Twenty, and the Northeast Quarter of the Northeast Quarter of Section Nineteen, Township Eleven South, Range Thirty-seven East, Boise Meridian, advising said entryman that notwithstanding the fact that the time had long since expired within which final proof must be made upon the lands in his said entries no proofs had been made and allowing such entryman sixty days within which to show cause, if any he had, why said entries should not be cancelled; and

Whereas, a consideration of the records of this department and the State Board of Land Commissioners discloses the fact that this entryman has been in default for a number of years last past, and that the said entries were hereto- [fol. 256] fore, on September 16th, 1918, cancelled for failure to make final proof, but that the said order of cancellation was rescinded and the said records further indicate that the entryman has at all times during a number of years last past been fully advised of his delinquency and has been afforded ample and sufficient opportunity to comply with the Carey Act law; and

Whereas, a further consideration of the records discloses the fact that this entryman has heretofore exercised his Carey Act right to the extent of eighty acres, evidenced by entry No. 7 embracing the S. ½ S. W. ¼ of Section 21, Township 1 South, Range 37 East B. M., which he assigned to E. E. Susong, and which is in addition to the one hundred and twenty acres covered by his present entries. To the extent of forty acres this entryman, therefore, is occupying the land in his present entries in violation of the Carey Act law.

Now, therefore, in view of the foregoing conditions, it is hereby ordered that the entries of E. E. Gillespie Nos. 55 and 118 embracing the West Half of the Northwest Quarter of Section Twenty and the Northeast Quarter of the Northeast Quarter of Section Nineteen, Township Eleven South, Range Thirty-seven East, Boise Meridian, be and the same are hereby cancelled and held for naught.

W. G. Swendsen, Commissioner of Reclamation.

Attest: Freda Reynolds, Carey Act Clerk. (Seal.)

[fol. 257] Department of Reclamation

Carey Act Minutes

December 19, 1922.

In re Portneuf-Marsh Valley Irrigation Project—Cancellation of Entry No. 146, David Burnett

Whereas, under date of September 30, 1920, a sixty day notice prepared in accordance with the rules and regulations of this Department was forwarded to David Burnett, allowing him sixty days within which to show cause why his Carey Act entry covering the Northeast Quarter of the Range 37 East, Boise Meridian, in the Portneuf-Marsh Valley Irrigation Project should not be cancelled; and

Whereas, the said sixty day period has long since expired and no showing has been made by the said entrymen:

Now, therefore, it is hereby ordered that in view of these conditions the said entry to David Burnett covering the Northeast Quarter of the Northeast Quarter of Section 30, Township 10 South, Range 37 East, Boise Meridian, in the Portneuf-Marsh Valley Project be and the same is hereby cancelled and held for naught.

W. G. Swendsen, Commissioner of Reclamation.

Attest: A. F. S. Steele, Carey Act Clerk. (Seal.)

[fol. 258] Department of Reclamation

Carey Act Minutes

February 12, 1923.

In re Portneuf-Marsh Valley Irrigation Company Project—Cancellation of Entry No. 180, Ira Goff, N. W. ¼ S. W. ¼ Sec. 29, T. 10 S., R. 37 E., B. M.

Whereas, under date of December 11, 1922, a sixty-day notice, prepared in accordance with the rules and regulations of this Department was forwarded to Ira Goff, by registered mail, allowing him sixty days within which to show cause why his Carey Act Entry No. 180, covering the Northwest Quarter of the Southwest Quarter of Section Twenty-nine (29) Township Ten (10) South, Range Thirty-seven (37) East, Boise Meridian, in the Portneuf-Marsh Valley Irrigation Company Project should not be cancelled; and

Whereas, the said sixty day period has expired and no showing has been made by the said entryman;

Now, therefore, it is hereby ordered that in view of these conditions the said entry of Ira Goff, covering the Northwest Quarter of the Southwest Quarter of Section Twenty-nine (29), Township Ten (10) South, Range Thirty-seven (37) East, Boise Meridian in the Portneuf-Marsh Valley Irrigation Company Project be, and the same is hereby cancelled and held for naught.

W. G. Swendsen, Commissioner of Reclamation.

Attest: A. F. S. Steele, Carey Act Clerk. (Seal.)

[fol. 259] Plaintiffs' Exhibit No. M

This indenture and agreement, made this 1st day of August, 1916, between the Portneuf-Marsh Valley Irrigation Company, Limited, an Idaho corporation (hereinafter sometimes called the Construction Company), party of the first part, and the Portneuf-Marsh Valley Canal Company, Limited, an Idaho Corporation (hereinafter sometimes called the Operating Company), party of the second part,

Witnesseth: Whereas, on June 3rd, 1908, the predecessors in interest of the Construction Company above named, pursuant to the Act of Congress of August 18th, 1894, and acts amendatory and supplemental thereto, commonly known as the Carey Act, and the laws of the State of Idaho accepting and carrying into effect such legislation, entered into a contract with the State Board of Land Commissioners of Idaho, providing for the construction of a system of irrigation works in Bannock County, Idaho, for the reclamation of certain Carey Act lands in said county and for the sale by the said Construction Company of water rights or shares in such works, and providing for a method of transferring the ownership and control of said irrigation works from the said Construction Company to the purchasers of said shares, and,

Whereas, in pursuance of such method of transferring the ownership and control of said irrigation works, the party of the second part has been organized under the laws of the State of Idaho, and the Construction Company has heretofore sold and issued to the several purchasers of water rights in its said irrigation system shares of stock [fol. 260] in the Operating Company equal in number to the acres of land for which water rights were purchased by such purchasers, respectively, and

Whereas, the said Construction Company has heretofore fully completed the said irrigation works in accordance with its said contract with the State of Idaho and the plans and specifications filed as therein provided with the State Engineer of Idaho, and approved by him and the State Board of Land Commissioners of Idaho, and the said works have been, at the request of second party, heretofore accepted and approved by said State Engineer and State Land Board as fully completed, and,

Whereas, by a contract in writing between the parties hereto, dated March 20th, 1915, it was provided that on or before January 1st, 1916, the Construction Company should convey to the Operating Company the said irrigation system, together with all water rights, easements and property owned and used by the Construction Company in connection therewith, and the time within which such conveyance should be made has heretofore, by agreement between the parties, been extended to this date;

Now, therefore, in full compliance with first party's obligations under said contract to convey said property, and, further, in order to carry out the spirit and intent of the provisions of the aforesaid written agreement of June 3rd, 1908, between the State of Idaho and the predecessors in interest of the first party hereto, providing for the transfer of the said works to the Operating Company upon the completion of the same, and in order to vest the legal title to the said works and water rights in the Operating Company, [fol. 261] for the use and benefit of the stockholders thereof, and in consideration of the sum of one dollar, cash in hand paid by the party of the second part to the party of the first part, the receipt of which is hereby acknowledged, and in further consideration of the privilege of selling stock in said Operating Company, as defined in said state contract, and as hereinafter reserved, the party of the first part has granted, bargained, sold and conveyed and by these presents does grant, bargain, sell, convey and confirm unto the party of the second part, its successors and assigns forever, that certain irrigation system, situate in Bannock County, Idaho, constructed by first party in accordance with the state contract aforesaid, a portion of which irrigation system is more specifically described as follows:

That certain water permit, No. 3317, for 244.4 second feet of the waters of the Portneuf River, approved by the State Engineer of Idaho December 21st, 1907, and recorded in Book 10 of Permits, page 3317, among the records in the office of the State Engineer of Idaho.

That certain water permit, No. 8378, for 225 second feet of the waters of Topons Creek, approved by the State Engineer of Idaho July 6th, 1912, and recorded in Book 27 of Permits, page 8378 among the records in the office of the State Engineer of Idaho.

A certain diversion dam in Topons Creek, located at or about north 76 degrees 11 minutes west 1,420 feet from the southeast corner of Section 33, Township 6 south, Range 38 E. B. M., and that certain feeder canal, known as the Topons Canal, leading from said dam to the reservoirs used in connection with said irrigation works, whereby the waters of Topons Creek are diverted into said reservoir.

[fol. 262] A certain storage dam, situated near the southwest corner of Section 19, Township 6 south, Range 39 E. B. M., and the storage reservoir created thereby.

A certain canal way leading from said dam down the Portneuf River to the vicinity of the station known as Pebble, on the Oregon Short Line Railway, in Bannock County, Idaho, used in connection with conveying the storage waters from said dam down the Portneuf River to the point of diversion.

A certain diversion dam and headgates located in the Portneuf River, in Section 22, Township 9 south, Range 37 E. B. M. near the station known as Topaz, on the Oregon Short Line Railway, in Bannock County, Idaho, and a main canal way, twenty miles in length, leading from said diversion dam to and beyond the Town of Downey, together with the main and subordinate laterals into which said main canal way is subdivided.

It is the intent of this conveyance to convey to second party the said irrigation system in its entirety, subject to the reservations herein set forth, but including all lands, water rights, rights of way, easements, privileges, ditches, dams, flumes, headgates, weirs and structures, of every kind and nature, belonging to first party, used in connection with said irrigation works and system, notwithstanding the fact that only certain portions of said irrigation system are herein particularly described. But subject likewise, to the burdens and conditions under which said property rights, franchises, and easements were constructed or acquired by first party, and subject, also, to a certain mortgage or deed of trust, dated July 1st, 1909, made and executed by the [fol. 263] party of the first part herein to Colonial Trust & Savings Bank and L. C. Rose, trustees, recorded in Book 11 of Mortgages, page 528 thereof, among the records of Bannock County, Idaho.

Among the rights of way herein conveyed are the following, being in full compliance with Paragraph 5 of the aforesaid agreement between the parties hereto, dated March 20th, 1915:

All rights acquired by first party under a certain deed from Stephen D. Grimm and wife, recorded in Book 3 of Agreements, page 11, records of Bannock County, Idaho.

All rights acquired by first party under a certain deed from Walter J. Kelly and wife, recorded in Book 3 of agreements, page 10, records of Bannock County, Idaho.

All rights acquired by first party under a certain deed from O. E. Exum and wife, recorded in Book 3 of agreements, page 13, records of Bannock County, Idaho.

All rights acquired by first party under a certain deed from W. R. Godfrey and Spencer G. Godfrey and their respective wives, recorded in Book 3 of agreements, page 12, records of Bannock County, Idaho.

All rights acquired by first party under a certain deed from David A. M. Martin and wife, recorded in Book 3 of Agreements, page 10, records of Bannock County, Idaho.

The party of the first part expressly reserves the right to sell water rights in said irrigation system and shares of stock in the Operating Company representing said water rights until all the remaining unissued shares of said Op- [fol. 264] erating Company, up to a total of 14,000 shares, are disposed of by it.

It further reserves the right, if it so elects, to install a pumping plant for the irrigation of lands above the present gravity canal of the said system, taking the water from such gravity canal to irrigate such lands; provided, however, that this reservation shall not give the Construction Company the right to sell any water rights either under the system as now constructed or under any future extensions or additions thereto, including the pumping plant, in excess of 14,000 acres.

The Operating Company expressly covenants and agrees that the unissued stock in said company shall be held subject to the order of the Construction Company and shall be issued to or at the request of said Construction Company, to be by it delivered to purchasers of water rights, in such manner and on such terms as such Construction Company may deem proper.

Said Operating Company further covenants that it will, upon request of the Construction Company, from time to time, cause its president and secretary to issue shares of stock in such Operating Company to the purchasers of water rights for such lands as may be susceptible of irrigation from said irrigation system or from any addition or extension thereto or any pumping plant pumping water therefrom.

The Operating Company expressly covenants and agrees that such stock, while in the hands of said Construction Company, before sale to water users and before applied to or made appurtenant to land, shall have no voting power

and shall not be subject to any tax, assessment or charge [fol. 265] of any kind made or levied by such Operating Company, but shall for all purposes be regarded, until so issued, applied and made appurtenant to land, as unissued stock of said Operating Company. All shares in said operating Company shall be held subject to the rights of the Construction Company, as provided in the contract between the said Construction Company and the purchasers of such shares, and as provided in the contract between the said Construction Company and the State of Idaho, until the several installments of the purchase price due the Construction Company, its successors or assigns, shall have been fully and finally paid.

The Operating Company further expressly covenants, as part of the consideration for the property herein conveyed, that no amendment, alteration or repeal shall be made by either its stockholders or board of directors of the following sections of Article 5 of the By Laws of said Construction Company, to wit: Sections 5, 6, 7, 8 and 9, in so far as the rights or interests of said Construction Company may be affected, without the consent of such company in writing.

The Operating Company further expressly covenants and agrees to deliver water to its stockholders from said system to which such stockholders are entitled by virtue of their respective shares of stock, and expressly covenants and agrees to hold the Construction Company harmless from any claim or demand growing out of the construction or operation of said irrigation system, as well as any failure to deliver water to those entitled thereto.

In witness whereof, the parties hereto, by their respective officers thereunto duly authorized by appropriate res- [fol. 266] olutions of the board of directors of each company, at a meeting duly called and held for that purpose, have caused the respective corporate names of the parties hereto to be subscribed and the respective corporate seals to be affixed the day and year first above written.

Portneuf Marsh Valley Irrigation Company, Limited, by Charles S. Davis, President. Attest: W. Redman Pealsely, Secretary. Portneuf-Marsh Valley Canal Company, Limited, by George T. Hyde, President. Attest: Jesse S. Richards, Secretary. (Corporate Seal.)

COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, ss:

On this 14 day of August, in the year 1916, before me, Fred J. Moffatt, a notary public in and for said county, personally appeared Charles S. Davis and W. Rodman Peabody, known to me to be the President and Secretary, respectively, of the Portneuf Marsh Valley Irrigation Company, Limited, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and [fol. 267] affixed my official seal the day and year in this certificate first above written.

Fred J. Moffatt, Notary Public. My commission expires Feb. 7, 1919. (Seal.)

STATE OF IDAHO
County of Bannock, ss:

On this 4th day of January, in the year 1917, before me, T. D. Jones, a notary public in and for said county, personally appeared Jesse S. Richards, known to me to be the Secretary, of the Portneuf Marsh Valley Canal Company, Limited, the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

T. D. Jones, Notary Public. My Commission expires Feb. 7, 1919. (Seal.)

STATE OF IDAHO,
Bannock County, ss:

On this the 4th day of January, in the year 1917, before me Swen F. Johnson, a notary public, in and for said county, personally appeared George T. Hyde, known to me to be the President of the Portneuf Marsh Valley Canal Company, Limited, the corporation that executed the within [fol. 268] instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Swen F. Johnson, Notary Public. My commission expires Jan. 28, 1919. (Seal.)

Recorded at the request of Edwin Snow, 1:40 P. M. Jan. 8, 1917. C. W. Pomeroy, Recorder, by Harry J. Fox, Deputy, Book 31 Deeds, Page 398. Fee, $4.80.

State of Idaho,
County of Bannock, ss:

I, R. C. Early, Clerk of the District Court, Ex Officio Auditor and Recorder in and for said County and State, hereby certify that the above and foregoing is a full, true and correct copy of the original Deed Portneuf-Marsh Valley Irrigation Company, Ltd., to Portneuf-Marsh Valley Canal Company, Ltd., as the same appears of record or on file in my office.

In witness whereof, I have hereunto set my hand and affixed by official seal at Pocatello, Idaho, this 31st day of Oct. 1923.

R. C. Early, Clerk District Court, ex Officio Auditor and Recorder, by L. Spangberg, Deputy.

[fol. 269] Defendants' Exhibit No. 1

Notice of Assessment

Portneuf-Marsh Valley Canal Company—Location of Principal Place of Business, Downey, Idaho

Notice is hereby given that a meeting of the directors — held on the 23d day of February, 1915, and an assessment of 50 cents per share was levied on the capital stock of the corporation, payable to J. A. Fitts, at Downey, Idaho, on the 1st day of April, 1915. Any stock upon which this assessment remains unpaid on the 1st day of April, 1915, will be delinquent and advertised for sale at public auction, and unless payment is made before, will be sold upon the

25th day of May, 1915, to pay the delinquent assessments, together with the costs of advertising and expenses of sale.

J. A. Fitts, Secretary, with office at the bank building, Downey, Idaho.

Affidavit of Publication

STATE OF IDAHO,
County of Bannock, ss:

I, Frank B. Porter, being duly sworn, depose and say that I am the publisher of The Downey Idahoan, a weekly news paper published at Downey, Idaho, Bannock County, in the State of Idaho. That the Assmt. Notice, a true copy [fol. 270] of which is hereto attached, was published in The Downey Idahoan for four consecutive issues, first publication having been made on the 5 day of Mar., 1915, and the last publication having been made on the 18 day of Mar. 1915.

That said paper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

(Signed) Frank B. Porter.

Subscribed and sworn to before me this 10 11 23. (Signed) Fred Waite, Notary Public. My commission expires September 1, 1924. (Seal.)

Notice of Sale of Delinquent Stock

Pottneuf-Marsh Valley Canal Company, a Corporation—Location of Principal Place of Business, Downey, Idaho

There is delinquent upon the following described stock on account of assessments levied on the 23rd day of February, 1915, the several amounts set opposite the names of the respective stockholders:

Name	Cert No	Shares	Amount
Anna Todd	41	80	$40 00
Geo. C. Eaton	172	40	42 00
Finlay P. Sleeper	158	80	40 00
A. F. Daughenbaugh	80	80	40 00
[fol. 271] D. W. Conine	165	80	84 00
M. V. Burton	A 26	1	50
J. S. Welch	A 30	20	10 00
L. O. Poynter	135	40	20 00
L. O. Poynter	122	42 12	21 06
Jos. Murphy	13	80	40 00
Jos. Murphy	10	80	40 00
Thos. R. Bennett	71	80	40 00
Frank Flint	8	40	20 00
C. N. Ray	34	80	44 00
D. C. Ray	30	104 52	109 76
Benj. A. C. Norstrom	164	40	46 50
L. F. King	68	80	50 25
A. F. Daughenbaugh	120	80	40 00
O. P. Merrill	A 7	80	20 00
A. F. Sorstedt	16	80	40 00
Nellie Robinson	92	80	68 05
J. H. Byington	A 27	2	2 50
F. D. Cathcart	17	80	40 00
D. W. Standrod	A 15	58	35 57
Mrs. R. E. Bennett	136	40	20 00
E. E. Susong	7	80	40 00
E. E. Susong	19	80	40 00
Robt. L. Hardwick	23	40	24 50
Chris Knudson	94	5	5 82
Anna Kelly	85	80	93 05
N. E. Coffin	74	40	24 50
Mary F. Zoerb	80	80	40 00
Chas. Woody	150	40	70 50
Wm. A. Webster	143	40	70 50
E. C. White	115	80	40 00
W. K. Walton	20	40	46 50
H. A. Weddle	108	40	70 50
M. A. Thomas	A 35	22	1 00
J. C. Tewell	79	42 8	26 40
Harold E. Tripp	80	20	20 00
E. E. Gillespie	55	80	141 05

Name	Cert. No.	Shares	Amount
Chas. O. Reynolds	149	81 04	93 01
[fol. 272] Benj. P. Osburn	175	40	70 50
C. H. Overton	67	80	141 05
Geo. A. Nixon	123	80	141 05
Andrew Newbold	A 38	40	46 50
P. H. Marley	105	80	141 05
Fred Benninger	144	40	24 00
Jos. C. Mock	145	40	20 00
W. C. Morley	86	40	20 00
John H. Moyes	104	40	70 50
R. L. McDonough	177	80	141 05
P. H. Marley	2	80	141 05
A. S. Maxham	127	80	48 05
Mary Ethel Mock	21	80	40 00
T. C. Lawler	52	80	141 05
Duane E. Kent	35	80	141 05
Herman Kasiska	82	80	40 00
Mabel J. Kasiska	87	80	40 00
W. F. Kasiska	81	80	40 00
Lars W. Johnson	174	40	70 50
Lars W. Johnson	A 21	60	105 80
Portneuf Marsh Valley Irrigation Co	116	40	20 00
M. L. Johnson	A 17	42 60	49 58
Olivia J. Hanchett	130	80	141 05
J. D. Cathcart	37	80	40 00
F. D. Cathcart	39	80	40 00
W. P. Havenor	A 9	172 56	304 25
E. A. Goddard	48	80	40 00
L. C. Farr	178	5	5 25
A. W. Farr	183	15	19 70
L. C. Farr	182	21	28 00
L. C. Farr	179	27 56	13 78
E. E. Gillespie	118	40	70 50
E. M. Engdahl	141	79 9	140 08
T. M. Edwards	A 1	160	282 13
D. W. Evans	22	80	84 00
Anton K. Dahlen	32	40	70 50
Chester O. Christensen	A 21	30	52 90
[fol. 273] H. E. Conine	162	40	70 50
Oliver Chambers	83	80	40 00

Name	Cert No	Shares	Amount
Everard Chambers	84	80	40 00
M. V. Burton	A 41	40	20 00
David Burnett	146	40	70 50
Mrs. Pauline Buchanan	119	80	141 05
Frank W. Blue	176	80	70 50
F. H. Berg	58	40	70 50
J. W. Alldred	69	80	141 05
Herman Anderson	169	79 76	139 64
Wm. I. Anderson	161	40	20 00
John Anderson	140	40	46 50
L. A. Trowbridge	129	80	4 00
N. S. Pond	96	80	92 50
Ida P. Reisner	A 39	40	20 00
Chris Knudson	173	23	12 40
Wm. M. Underwood	A 45	10 3	10 60
Mary E. Linton	A 46	5 44	5 71
D. W. Evans	P 1	11 07	11 61
John E. Clegg	P 2	10	10 50
A. B. Perkins	P 3	9 54	10 01
R. H. Palmer	P 4	10	5 00
Martha A. Wise	P 6	20	21 00
R. H. Palmer	P 7	10 85	5 94
R. H. Palmer	P 8	13 39	14 08
H. M. Tibbitts	P 10	10 43	10 94
Wm. M. Thomas	P 12	2 66	1 33

And in accordance with law, so many shares of each parcel of such stock as may be necessary will be sold at the front door of the Bank Building in Downey, Idaho, on the 25th day of May, 1915, at 2 o'clock P. M. of such date, to pay delinquent assessment thereon, together with the costs [fol. 274] of advertising and expense of sale.

J. A. Fitts, Secretary, with location of office at Downey, Idaho, in bank building.

Notice

State of Idaho,
County of Bannock, ss:

F. W. Fauteck, being first duly sworn, deposes and says that he is a white male citizen over the age of 21 years and resides at Downey, Idaho; that on the 27th day of March,

1915, I personally deposited in an envelope the following notice:

Portneuf-Marsh Valley Canal Company—Location and Principal Place of Business, Downey, Idaho

Notice is hereby given that a meeting of the directors held on the 23d day of February, 1915, and an assessment of 50 cents per share was levied on the capital stock of the corporation, payable to J. A. Fitts, at Downey, Idaho, on the 1st day of April, 1915. Any stock upon which this assessment remains unpaid on the 1st day of April, 1915, will be delinquent and advertised for sale at public auction, and unless payment is made before, will be sold upon the 25th day of May, 1915, to pay the delinquent assessments, [fol. 275] together with the costs of advertising and expense of sale.

J. A. Fitts, Secretary, with office at bank building, Downey, Idaho;

and thereafter on the 27th day of March, 1915, I deposited said envelopes properly sealed and stamped with a United States Postage stamp, addressed to each of the following stockholders at their last known place of address, which is set opposite their respective names, to wit:

L. W. Woodin, care of Nat. Cash Reg. Co., Salt Lake City, Utah.
Anna Todd, The White, No. 12, Fort Wayne, Ind.
Robt. Dill, Live Stock Exch. Bldg., Chicago, Ill.
Geo. C. Eaton, Stamford, Texas.
A. L. Main, Montrose, Colo.
O. W. Bishop, Superior, Wyo.
Fred Mueller, Montrose, Colo.
David W. Christensen, Downey, Idaho.
H. C. Taylor, Montrose, Colo.
Finlay P. Sleeper, 775 Boylston St., Boston, Mass.
Chas. D. McCormick, Arimo, Idaho.
Emma Beckley, Hastings, Neb.
E. L. Mattoon, Stamford, Texas.
A. A. Ballard, Montrose, Colo.
A. C. Hancock, Downey, Idaho.
A. F. Daughenbaugh, Gowrie, Iowa.

Thos. Jenkins, McCammon, Idaho.
S. Dean Vincent, Portland, Ore.
D. W. Conine, 138 N. 8th St., Ft. Dodge, Iowa.
E. E. Gard, Glendora, Calif.
John C. Owen, Downey, Idaho.
Wm. J. Bybee, Downey, Idaho.
A. M. Brownlee, Downey, Idaho.
[fol. 276] Jerry Christiansen, Downey, Idaho.
M. V. Burton, Virginia, Idaho.
J. S. Welch, Virginia, Idaho.
J. H. Hartvigsen, Downey, Idaho.
Mrs. Elizabeth H. Barbee, 732 Oakland Blvd., Chicago, Ill.
Heriot Riddle, McCammon, Idaho.
H. W. Wistner, Imlay, Nev.
O. A. Smith, Downey, Idaho.
L. O. Poynter, Virginia, Idaho.
W. J. Tull, Virginia, Idaho.
H. M. Tibbitts, care of Haas-Lieber Co., St. Louis, Mo.
J. C. Tewell, Napsonee, Neb.
Harold E. Tripp, Arimo, Idaho.
E. E. Gillespie, Boise, Idaho.
Georgia M. Stateler, Waukegan, Ill.
Jesse S. Richards, Virginia, Idaho.
Sophia C. Roberts, Milliken, Colo.
Chas. O. Reynolds, 1126 1st Nat. Bank Bldg., Chicago, Ill.
F. D. Staves, 214 K. P. Blk., Des Moines, Iowa.
Benj. P. Osborne, Naco, Ariz.
C. H. Overton, Pocatello, Idaho.
Geo. A. Nixon, Gibbon, Neb.
Andrew Newbold, Downey, Idaho.
P. H. Marley, Storey Bldg., Los Angeles, Calif.
Fred Benninger, care of E. G. Widmann, Glendora, Calif.
Jos. S. Morrison, Arimo, Idaho.
Jos. C. Mock, Downey, Idaho.
W. C. Morley, Pocatello, Idaho.
John H. Moyes, 3230 Lincoln Ave., Ogden, Utah.
R. L. McDonough, Waukegan, Ill.
A. S. Maxham, 1st Nat. Bank Bldg., Chicago, Ill.
Mary Ethel Mock, care J. C. Mock, Downey, Idaho.
T. C. Lawler, 126 S. 29th St., Lincoln, Neb.
[fol. 277] Duane E. Kent, care W. H. Eldridge, Twin Falls, Idaho.

Maude M. Kelley, Pocatello, Idaho.
Herman Kasiska, care W. F. Kasiska, Pocatello, Idaho.
Mabel J. Kasiska, Pocatello, Idaho.
W. F. Kasiska, Pocatello, Idaho.
L. W. Johnson, Pocatello, Idaho.
Portneuf-Marsh Valley Irrigation Co., Downey, Idaho.
M. L. Johnson, Downey, Idaho.
Hamill & Van Eaton, care Robt. L. Van Eaton, 966 Lake St., Salt Lake City, Utah.
Olivia J. Hanchett, Evanston, Ill.
Zeb Fitts, Downey, Idaho.
J. E. Cathcart, Kingsley, Iowa.
W. P. Havenor, Pocatello, Idaho.
E. A. Goddard, Montrose, Colo.
L. C. Farr, Arimo, Idaho.
A. W. Farr, Arimo, Idaho.
O. M. Engdahl, Salt Lake City, Utah.
T. M. Edwards, McCammon, Idaho.
D. W. Evans, 31 State St., Chicago, Ill.
Anton K. Dahlen, American Falls, Idaho.
Benj. S. Crow, Boise, Idaho.
Chester O. Christiansen, Helena, Mont.
H. F. Conine, Collinston, Utah.
Oliver Chambers, Rock Springs, Wyo.
Everard Chambers, care Oliver Chambers, Rock Springs, Wyo.
David Burnett, Arimo, Idaho.
Mrs. Pauline Buchanan, care of P. H. Marley, Storey Bldg., Los Angeles, Calif.
Frank W. Blue, Pocatello, Idaho.
F. H. Berg, Pocatello, Idaho.
J. W. Aldred, Pocatello, Idaho.
Herman Anderson, Swan Lake, Idaho.
Wm. I. Anderson, Kellogg, Idaho.
John Anderson, Downey, Idaho.
[fol. 278] L. A. Trowbridge, Evanston, Ill.
N. S. Pond, Pocatello, Idaho.
Ida Pauline Reisner, Virginia, Idaho.
Jos. Brim, Downey, Idaho.
J. J. Barnes, Downey, Idaho.
C. W. Hancock, Downey, Idaho.
John Dyson, Downey, Idaho.

John Newbold, Downey, Idaho.
W. M. Underwood, Downey, Idaho.
Mary E. Linton, Downey, Idaho.
Peter W. Olsen, Oxford, Idaho.
O. C. Wilkes, Evanston, Wyoming.
W. W. Overton, Downey, Idaho.
C. C. Richards, care J. S. Richards, Virginia, Idaho.
C. C. Richards, Jr., care J. S. Richards, Virginia, Idaho.
H. P. Richards, Virginia, Idaho.
J. L. Hartvigen, Downey, Idaho.
Peter Christiansen, Downey, Idaho.
S. F. Johnson, Downey, Idaho.
John S. Hyde, Downey, Idaho.
Wm. Astin, Downey, Idaho.
C. B. Hancock, Downey, Idaho.
T. W. Bennett, Virginia, Idaho.
Mrs. Carpenter, care E. G. Carpenter, Glendora, Calif.
T. W. Monell, Montrose, Colo.
E. G. Widmann, Glendora, Calif.
O. P. Merrill, Downey, Idaho.
Moses Christiansen, Downey, Idaho.
A. F. Sordstedt, Gowrie, Iowa.
Nellie Robinson, Richmond, Utah.
Frank Robinson, Virginia, Idaho.
J. H. Byington, Downey, Idaho.
F. D. Cathcart, 1472 E. 1st St., Long Beach, Calif.
John Ware, Downey, Idaho.
Edwin Snow, Boise, Idaho.
[fol. 279] D. W. Standrod, Pocatello, Idaho.
Mrs. R. E. Bennett, Virginia, Idaho.
L. T. Whitaker, Downey, Idaho.
Fred Waite, Downey, Idaho.
Benj. A. C. Norstrom, Great Falls, Mont.
Wm. Laurenson, Downey, Idaho.
W. O. Haldeman, Downey, Idaho.
C. E. Layton, Downey, Idaho.
Robert S. Nelson, 1973 E. Ocean Ave., Long Beach, Calif.
Jos. Murphy, Missoula, Mont.
Thos. R. Bennett, Virginia, Idaho.
Sievers & Fitts, (George Green), Downey, Idaho.
Dr. F. C. Knight, Waukeegan, Ill.
Lottie L. Cobb, 181 W. Park Ave., Aurora, Ill.

John F. Widmann, Jefferson, Wis.
W. I. Layton, Layton, Utah.
Frank Flint, Downey, Idaho.
Antowonet Tregaza, Utah Savings & Trust Bldg., Salt Lake City, Utah.
C. N. Ray, Kearns Bldg., Salt Lake City, Utah.
D. C. Ray, Malad, Idaho.
N. J. Hartvigsen, Downey, Idaho.
J. A. Fitts, Downey, Idaho.
W. H. Chester, Downey, Idaho.
John Dahlke, Virginia, Idaho.
E. E. Susong, Downey, Idaho.
Robt. L. Hardwick, Downey, Idaho.
J. E. Yoxall, Downey, Idaho.
D. C. Olmstead, care of Fred L. Olmstead, Cheyenne, Wyo.
T. E. Watson, Virginia, Idaho.
Nels O. Pehrson, Downey, Idaho.
C. K. Hensmann, Downey, Idaho.
W. H. Chester, Downey, Idaho.
F. L. Olmstead, Cheyenne, Wyo.
Mary Gard, Glendora, Calif.
Anna Kelly, Downey, Idaho.
[fol. 280] N. S. Coffin, Arimo, Idaho.
W. H. Coffin, Downey, Idaho.
C. Leader, Downey, Idaho.
Ira Goff, Downey, Idaho.
C. Dolder, Virginia, Idaho.
J. A. Fitts, Downey, Idaho.
C. H. Norton, Downey, Idaho.
Mary F. Zoerb, Akron, Iowa.
Charles W. Woody, Butler, Mo.
Wm. A. Webster, Livingston, Mont.
E. C. White, Pocatello, Idaho.
Chas. Webber, R. R. 1, Box 103, Sandy, Utah.
W. K. Walton, R. R. 3, Box 222, Murray, Utah.
H. A. Weddle, Downey, Idaho.
Vinnie R. Walling, 3427 Morrell St., Kansas City, Mo.
M. A. Thomas, Downey, Idaho.
John E. Clegg, Downey, Idaho.
A. B. Perkins, Downey, Idaho.
R. H. Palmer, Downey, Idaho.
Bird Clegg, Downey, Idaho.

Martha Wise, Downey, Idaho.
Ferris & Pinkney, Downey, Idaho.
J. E. Criddle, Downey, Idaho.
Lorin Criddle, Downey, Idaho.
Leo. V. Johnson, Downey, Idaho.
Wm. M. Thomas, Swan Lake, Idaho.
Chris Knudson, R. R. 3, Preston, Idaho.

And that there is regular United States mail facilities between Downey, Idaho, and the several addresses above given.

F. W. Fauteck.

Subscribed and sworn to before me this 6th day of March, 1915. Swen F. Johnson, Notary Public. My commission expires Jan. 28, 1919. (Seal.)

{fol. 281} Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Will R. Ferris, publisher of The Downey Idahoan, published weekly at Downey, Bannock County, State of Idaho, do solemnly swear that a copy of the annexed advertisement was published weekly in the regular and entire issue of said newspaper, and not in any supplement thereof, for one week, with the issue dated April 14th, 1915.

Will R. Ferris.

Subscribed and sworn to before me this 28th day of May, 1915. W. J. Nuffer, Notary Public. My commission expires Aug. 5th, 1916. (Seal.)

Defendants' Exhibit No. 2

Order Levying an Assessment

For the purpose of paying expenses, conducting business, paying debts, it is hereby ordered that an assessment of 50 cents on each share of the capital stock of the Portneuf-Marsh Valley Canal Company is hereby levied, the same to be payable to J. A. Fitts, Secretary, and Treasurer of said Corporation, at Downey, Idaho, on the 1st day of April,

1916; all assessments not paid on said stock on said day shall be delinquent, and shall be sold at public auction, on the 25th day of May, 1916.

[fol. 282] Notice of Assessment

Portneuf-Marsh Valley Canal Company—Location of Principal Place of Business, Downey, Idaho

Notice is hereby given that a meeting of the directors was held on the 7th day of February, 1916, and an assessment of Fifty (50) Cents per share was levied on the capital stock of the corporation, payable to J. A. Fitts, at Downey, Idaho, on the 1st day of April, 1916. Any stock upon which this asses ment remains unpaid on the 1st day of April, 1916, will be delinquent and advertised for sale at public auction, and unless payment is made before, will be sold on the 25th day of May, 1916, to pay the delinquent assessments, together with the costs of advertising and expenses of sale.

J. A. Fitts, Secretary, with office at Downey, Idaho.

Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Frank B. Porter, being duly sworn, depose and say that I am the publisher of The Downey Idahoan, a weekly news paper published at Downey, Idaho, Bannock County, State of Idaho. That the Assessment Notice, a true copy of which is hereto attached, was published in The Downey Idahoan for three consecutive issues first publication having been made on the 19 day of Feb., 1916 and the last publication having been made on the 3 day of Mar. 1916.
[fol. 283] That said paper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive weeks prior to the first publication of said notice of advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

Frank B. Porter.

Subscribed and sworn to before me this 10-11-23. Fred Waite, Notary Public. My commission expires September 1, 1924. (Seal.)

Notice of Sale of Delinquent Stock

Portneuf-Marsh Valley Canal Company, a Corporation—Location of Principal Place of Business, Downey, Idaho

There is delinquent upon the following described stock on account of assessments levied on the 7th day of February, 1916, the several amounts set opposite the names of the respective stockholders:

Name	Cert. No.	Shares	Amount
Anna Todd	41	80	$40 00
Geo. C. Eaton	172	40	20 00
D. W. Christensen	78	40	20 00
Finlay P. Sleeper	158	80	40 00
E. L. Mattoon	171	53 34	26 67
S. Dean Vincent	72	40	20 00
E. E. Gard	62	80	40 00
Wm. J. Bybee	A 24	40	20 00
[fol. 284] L. O. Poynter	122	42 08	21 04
Frank Flint	8	40	20 00
C. N. Ray	34	80	40 00
D. C. Ray	30	104 52	52 26
John Dahlke	153	40	20 00
Benj. A. C. Norstrom	164	40	20 00
C. A. Black	63	53	26 50
W. W. Overton	68	80	27 25
O. P. Merrill	A 7	80	20 00
J. L. Robinson	92	80	40 00
J. L. Robinson	93	80	40 00
John Ware	12	80	40 00
T. A. Robinson	A 4	80	40 00
Mrs. R. E. Bennett	136	40	20 00
E. E. Susong	7	80	40 00
E. E. Susong	19	80	40 00
Chris Knudson	94	5	2 50
C. K. Hensman	59	25 35	11 67
Mary Gard	9	80	40 00
Anna Kelly	85	80	40 00
C. H. Norton	A 23	15	7 50
Mary F. Zoerb	80	80	40 00
Chas. Woody	150	40	20 00
Wm. A. Webster	143	40	20 00

Name	Cert. No.	Shares	Amount
W. K. Walton	20	40	20 00
H. A. Weddle	108	40	20 00
J. C. Tewell	79	52 8	26 40
E. E. Gillespie	55	80	40 00
Chas. C. Reynolds	149	81	40 52
E. E. Gard	66	80	40 00
F. D. Staves	97	80	40 00
Mrs. Pyle	175	40	20 00
C. H. Overton	67	80	40 00
Geo. A. Nixon	123	80	40 00
H. V. Monell	105	80	40 00
Jos. A. Morrison	168	40	20 17
John H. Moyes	104	40	20 00
R. L. McDonough	177	80	40 00
[fol. 285] T. C. Lawler	52	80	40 00
Duane E. Kent	35	80	40 00
Herman Kasiska	82	80	40 00
Mabel J. Kasiska	87	80	40 00
A. S. Maxham	127	80	40 00
L. W. Johnson	A 27	30	15 00
W. F. Kasiska	81	80	40 00
Wm. M. Underwood		10	5 00
W. E. Spackman		10	5 00
David Johnson		10	5 00
M. L. Johnson	A 17	42 6	21 30
O. J. Hanchett	130	80	40 00
W. P. Havenor	A 9	172 56	86 28
L. C. Farr	178	5	2 50
L. C. Farr, Jr	183	15	7 50
L. C. Farr	182	21	10 50
L. C. Farr, Jr	179	27 56	13 78
E. E. Gillespie	118	40	20 00
O. M. Engdahl	141	79 9	39 95
T. M. Edwards	A 1	160	80 00
D. W. Evans	22	80	40 00
Anton K. Dahlen	32	40	20 00
Chester O. Christensen	A 25	30	15 00
H. E. Conine	162	40	20 00
David Burnett	146	40	20 00
R. V. Monell	119	80	40 00

Name	Cert. No.	Shares	Amount
Frank M. Blue	176	40	20 00
F. H. Berg	58	40	20 00
E. E. Gard	124	105	52 60
J. W. Alldred	69	80	40 00
Herman Anderson	169	79 76	39 88
John Anderson	140	40	27 75
L. A. Trowbridge	129	80	40 00
Ida P. Reisner	A 39	20	10 00
Chas. C. Hurst	187	15	7 50
John Dyson	A 40	50	25 00
Chris Knudson	173	23	11 50
Heber F. Johnson	191	10	5 00
[fol. 286] Mary E. Linton	A 46	5 44	2 72
D. W. Evans	P 1	11 07	5 53
R. H. Palmer	P 4	10	5 00
Martha A. Wise	P 6	20	10 00
R. H. Palmer	P 7	10 85	5 47
R. H. Palmer	P 8	13 39	6 69
Leo V. Johnson	P 14	11 54	5 77
J. B. Wellman		40	20 00
John E. Clegg	P 2	10	5 00

And in accordance with law, so many shares of each parcel of such stock as may be necessary will be sold at the front door of the Bank building in Downey, Idaho, on the 25th day of May, 1916, at 2 o'clock P. M., of such date, to pay delinquent assessment thereon, together with the costs of advertising and expenses of sale.

J. A. Fitts, Secretary, with location of office at Downey, Idaho, in bank building.

Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Frank R. Porter being duly sworn, depose and say that I am the publisher of The Downey Idahoan, a weekly newspaper published at Downey, Idaho, Bannock County, in the State of Idaho. That the delinquent notice, a true copy of which is hereto attached, was published in The Downey Idahoan for two consecutive issues first publication having been made on the 5 day of May, 1916, and the last publica-

[fol. 287] tion having been made on the 12 day of May, 1916.

That said paper has been continuously and uninterruptedly published in said county during a period of seventy eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

Frank B. Porter.

Subscribed and sworn to before me this 10-11-23. Fred Waite, Notary Public. My Commission expires September 1, 1924. (Seal.)

Defendants' Exhibit No. 3

Order Levying Assessments

For the purpose of paying expenses, conducting business, paying debts, it is hereby ordered that an assessment of $.75 cents on each share of capital stock of the Portneuf-Marsh Valley Canal Company is hereby levied, the same to be payable to J. A. Fitts, Secretary and Treasurer of said corporation, of Downey, Idaho, on the 1st day of April, 1917; All assessments not paid on said stock on said day shall be delinquent, and shall be sold at public auction, on the 25th day of May, 1917.

Notice of Assessments

Portneuf-Marsh Valley Canal Co.—Location of Principal Place of Business, Downey, Idaho

Notice is hereby given that a meeting of the directors held on the 12th day of February, 1917 and an assessment [fol. 288] of $.75 cents per share was levied on the capital stock of the corporation, payable to the company, at Downey, Idaho, on the 1st day of April, 1917. Any stock upon which this assessment remains unpaid on the 1st day of April, 1917, will be sold at public auction, and unless payment is made before will be sold on the 25th day of May,

1917, to pay the delinquent assessments, together with the costs of advertising and expense of sale.

J. A. Fitts, Secretary, with office at the Downey State Bank.

Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Frank B. Porter being duly sworn, depose and say that I am the publisher of The Downey Idahoan, a weekly news paper published at Downey, Idaho, Bannock County, in the State of Idaho. That the Assmt. Notice, a true copy of which is hereto attached, was published in The Downey Idahoan for three consecutive issues first publication having been made on the 23 day of Feb., 1917 and the last publication having been made on the 9 day of Mar., 1917.

That said paper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

Frank B. Porter.

[fol. 289] Subscribed and sworn to before me this 10-11-23.
Fred Waite, Notary Public. My commission expires September 1, 1924. (Seal.)

Defendants' Exhibit No. 4

Minutes August 6, 1917

Order Levying Assessment

For the purpose of paying expenses, conduct the business paying debts, it is hereby ordered that an assessment of One (1) Dollar on each share of the capital stock of the Portneuf Marsh Valley Canal Company is hereby levied, same to be paid in cash or labor to the Portneuf Marsh Valley Canal Company at Downey, Idaho, on the 10th day of Oc-

tober, 1917. All assessments not paid on said stock on said date shall be delinquent and shall be sold at public auction on the 8th day of December, 1917.

Notice of Assessment

Portneuf-Marsh Valley Canal Co.—Location of Principal Place of Business, Downey, Idaho.

Notice is hereby given that at a meeting of the directors held on the 6th day of August, 1917, an assessment of $1.00 per share, cash or labor, was levied on the capital stock of the corporation, payable to the Treasurer of the Company at Downey, Idaho, on the 10th day of October, 1917; any stock upon which this assessment remains unpaid [fol. 290] on the 10th day of October, 1917, will be delinquent and advertised for sale at public auction and unless payment is made before, will be sold on the 8th day of December, 1917 to pay delinquent assessments together with costs of advertising and expenses of sale.

Jesse S. Richards, Secretary, with office at Downey State Bank Building, Downey, Idaho.

38-41.

Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Frank B. Porter, being duly sworn, depose and say that I am the publisher of The Downey Idahoan, a weekly news paper published at Downey, Idaho, Bannock County, in the State of Idaho. That the Assmt. Notice, a true copy of which is hereto attached, was published in The Downey Idahoan, for three consecutive issues first publication having been made on the 17 day of Aug., 1917 and the last publication having been made on the 31 day of Aug. 1917.

That said paper has been continuously and uninterruptedly published in said county during a period of seventy eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

Frank B. Porter.

[fol. 291] Subscribed and sworn to before me this 10-11-23. Fred Waite Notary Public. My commission expires September 1, 1924. (Seal.)

Notice of Sale of Delinquent Stock

Portneuf Marsh Valley Canal Company, a Corporation — Location of Principal Place of Business, Downey, Idaho

There is delinquent upon the following described stock on account of assessments levied on the 6th day of August, 1917, the several amounts set opposite the names of the respective stockholders:

Name	Certificate No.	Shares	Amount
J. H. Gibby	6	80	$80 00
Fred Mueller	A-12	10	17 50
H. C. Taylor	45	180	140 00
Chas. D. McCormick	181	40	70 00
Emma Beckley	101	40	40 00
A. C. Hancock	163	40	40 00
A. F. Daughenbaugh	54	80	80 00
S. D. Vincent	72	40	40 00
D. W. Conine	165	80	80 00
Chas. R. John	62	80	140 00
J. C. Owen	29	40	40 00
A. M. Browndee	70	80	80 00
Jerry Christiansen	A-6	40	40 00
M. V. Burton	A-26	1	1 00
H. A. Valentine	73	40	70 00
Elizabeth H. Barhoe	155	80	80 00
H. W. Wistner	64	52 74	52 74
O. A. Smith	11	80	80 00
[fol. 292] Franklin Crump	135	40	40 00
Jos. Murphy	13	80	140 00
Jos. Murphy	10	80	140 00
F. C. Knight	4	80	80 00
John F. Widmann	89	40	70 00
John F. Widmann	77	40	70 00
W. I. Layton	35	80 Frank	80 00
Frank Flint	8	40	70 00
C. N. Ray	34	80	80 00
D. C. Ray	30	104 52	134 48
N. J. Hartvigsen	76	40	40 00
Arley Dewey	50	40	70 00

Name	Certificate No.	Shares	Amount
John Dahlke	153	40	70 00
L. T. Whitaker	A 20	39 98	39 98
F. L. Olmstead	51	80	80 00
C. E. Layton	33	80	80 00
Robert Nelson	31	80	80 00
L. F. King	68	80	120 00
J. L. Hartvigsen	113	40	40 00
J. L. Hartvigsen	44	40	40 00
J. L. Hartvigsen	A 23	1	1 00
Aaron Capenor		80	80 00
W. H. Chester	11	10	10 00
Peter Christiansen	A 2	41	41 00
J. L. Hartvigsen	A 3	1	1 00
S. F. Johnson	5	40	40 00
John S. Hyde	15	40	40 00
Wm. Astin	152	40	40 00
E. G. Widmann	43	80	80 00
Jos. Stones	A 35	50	50 00
T. W. Bennett	110	40	40 00
A. F. Daughenbaugh	120	80	80 00
Fred Benninger	134	40	40 00
Fred Benninger	56	80	80 00
T. W. Monell	99	40	40 00
T. W. Monell	43	40	40 00
T. W. Monell	47	40	40 00
E. G. Widmann	46	80	80 00
[fol. 293] E. G. Widmann	49	80	80 00
Geo. D. Maughan	A 7	40	40 00
John Newbold	A 71/4	40	90 35
Mose Christiansen	88	40	50 00
A. F. Sorstedt	16	80	80 00
Peter W. Olson	92	30	80 00
F. G. Robinson	93	80	100 00
J. H. Byington	A 27	2	2 50
Mary Ethel Mock	21	80	80 00
Herman Kasiska	82	80	140 00
W. F. Kasiska	81	80	80 00
R. H. Christensen	174	40	55 00
M. L. Johnson	A 17	42 6	74 50
Olivia J. Hanchett	130	80	80 00
Jos. Simpson	103	40	50 00
J. E. Cathcart	37	80	80 00
E. D. Cathcart	39	80	80 00
E. A. Goddard	48	80	80 00

Name	Certificate No	Shares	Amount
L. C. Farr	178	5	5 00
A. W. Farr	183	15	15 00
L. C. Farr	182	21	21 00
L. C. Farr, Jr.	179	27 56	27 56
J. S. Richards	25	160	160 00
E. E. Gillespie	118	40	160 00
T. M. Edwards	A 1	160	280 00
D. W. Evans	22	80	80 00
Oliver Chambers	83	80	80 00
Jerry Christiansen	A 32	1	1 00
Everard Chambers	84	80	80 00
Jerry Christiansen	A 32	1	1 00
M. V. Burton	A 41	40	40 00
H. V. Monell	119	80	80 00
Oliver Chambers	58	11 5	19 94
Chas. S. John	124	105	183 75
W. H. Chester	160	40	40 00
W. I. Anderson	161	40	40 00
John Anderson	140	40	40 00
L. A. Trowbridge	129	80	80 00
Chas. W. Blake	96	40	40 00
[fol. 294] Ida P. Reisner	A 39	65	97 50
F. D. Catheart	17	80	80 00
T. A. Robinson	A 4	60	80 00
F. C. Robinson	½ A 4	20	35 00
E. H. Welling	7	80	140 00
E. E. Susong	19	80	115 00
R. I. Hardwick	23	40	50 00
M. W. Aldridge	3	40	40 00
D. C. Olmstead	75	52 80	52 80
Nils O. Pehrson	100	40	40 00
W. H. Chester	91	40	40 00
F. L. Olmstead	40	40	40 00
Anna Kelly	80	80	140 00
John F. Widmann	95	78 74	78 74
N. S. Coffin	74	40	40 00
Arley Dewey	151	40	70 00
C. H. Norton	A 23	15	15 00
Mary Zoerb	80	80	140 00
Chas. Webber	60	40	70 00
Vinnie R. Walling	42	80	80 00
M. A. Thomas	A 35	2	3 50
H. M. Tibbitts	24	80	80 00

Name	Certificate No.	Shares	Amount
H. M. Tibbetts	14	80	80 00
J. C. Tewell	79	52 8	52 80
Guy E. Tripp	90	40	70 00
Chas. R. John	66	80	140 00
F. D. Staves	97	80	80 00
C. H. Overton	67	80	180 00
Andrew Newbold	A-38	20	8 30
E. B. Pearson	A-38½	20	35 00
Elmer T. Richards	114	40	40 00
H. V. Monell	105	80	140 00
Fred Benninger	144	40	40 00
Jos. C. Mock	145	40	25 00
W. C. Worley	86	40	40 00
Clyde A. Blair	227	80	140 00
Jos. A. Brim		10	10 00
J. J. Barnes		30	30 00
[fol. 295] C. W. Hancock	A-48	42 32	52 32
John Dyson	A-40	50	87 50
Guy E. Tripp	190	10	17 50
Heber F. Johnson	191	10	10 00
C. D. McCormick	192	15	26 25
W. R. Ferris	186	10	10 00
L. H. McCormick	15	15	26 25
Arley Dewey	194	5	8 75
Wm. M. Underwood	A-45	5	5 00
A. Dewey	195	10	17 50
Merrill & Richards	A-46	5 44	12 44
W. R. Ferris		5	5 00
Peter W. Olson	A-47	31 6	43 45
D. W. Evans	P-1	11 08	19 37
A. B. Perkins	P-3	9 55	16 68
R. H. Palmer	P-4	10	17 50
Bird Clegg	P-5	10	17 50
Martha A. Wise	P-6	20	35 00
R. H. Palmer	P-7	10 85	19 05
R. H. Palmer	P-8	13 39	23 42
H. M. Tibbetts	P-10	10 43	18 24
Ferris & Pinkey	P-11	17 72	17 72
John E. Criddle	P-12	2 86	2 86
Lorin Criddle	P-13	9 83	9 83
Leo V. Johnson		25	43 75
Morris Simpson		65	65 00
Geo. D. Maughan		50	50 00

And in accordance with law, so many shares of each parcel of such stock as may be necessary will be sold at the front door of the Bank Building in Downey, Idaho, on the 8th day of December, 1917, at 2 o'clock p. m. of such date, to pay delinquent assessment thereon, together with the costs of advertising and expenses of sale.

Jesse S. Richards, Secretary, with location of office at Downey, Idaho, in bank building.

Trip the first of the week.

[fol. 296] Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Frank B. Porter, being duly sworn, depose and say that I am the publisher of The Downey Idahoan, a weekly news paper published at Downey, Idaho, Bannock County, in the State of Idaho. That the Delinquent Notice, a true copy of which is hereto attached, was published in The Downey Idahoan for two consecutive issues first publication having been made on the 23 day of Nov. 1917 and the last publication having been made on the 30 day of Nov. 1917.

That said paper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

Frank B. Porter.

Subscribed and sworn to before me this 10-11-23. Fred Waite, Notary Public. (Seal.) My Commission expires September 1, 1924.

Defendants' Exhibit No. 5

Portneuf-Marsh Valley Canal Company

Minutes of the Board of Directors, held March 4th, 1918, at the regular place of business. Those present were Hyde, Christiansen, Robinson and Dewey.

[fol. 297] The meeting was called to order by President Hyde.

On motion duly made and seconded, carried unanimously, an assessment of $1.00 per acre was levied on the capital stock of the company, payable May 1.

Notice of Assessment

Portneuf-Marsh Valley Canal Co.—Location of Principal Place of Business, Downey, Idaho

Notice is hereby given that a meeting of the directors held on the 4th day of March 1918 and an assessment of $1.00 per share was levied on the capital stock of the corporation, payable to the company, at Downey, Idaho, on the 1st day of April, 1918. Any stock upon which this assessment remains unpaid on the 1st day of April, 1918, will be sold at public auction, and unless payment is made before will be sold on the 25th day of May, 1918, to pay the delinquent assessments, together with the costs of advertising and expense of sale.

Jesse S. Richards, Secretary, with office at the Downey State Bank.

Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Frank B. Porter, being duly sworn, depose and say that I am the publisher of The Downey Idahoan, a weekly [fol. 298] newspaper published at Downey, Idaho, Bannock County, in the State of Idaho. That the Assmt. Notice, a true copy of which is hereto attached, was published in The Downey Idahoan for three consecutive issues first publication having been made on the 8 day of Mar. 1918 and the last publication having been made on the 22 day of Mar. 1918.

That said paper has been continuously and uninterruptedly published in said county during a period of seventy eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

Frank B. Porter.

Subscribed and sworn to before me this 10-11-23. Fred Waite, Notary Public. My commission expires September 1, 1924. (Seal.)

Notice

Downey Property—House, 4 Lots, and Barn—for Sale on Good Terms. Write O. P. Merrill, Preston, Ida.

Notice of Sale of Delinquent Stock

Portneuf-Marsh Valley Canal Company, a Corporation—Location of Principal Place of Business, Downey, Idaho

There is delinquent upon the following described stock [fol. 299] on account of assessments levied on the 1st day of April, 1918, the several amounts set opposite the names of the respective stockholders:

L. W. Woodin	98	40 00
Robert Dill	111	80 00
Chas. D. McCormick	181	38 50
Emma Backley	101	40 00
F. G. Robinson	163	40 00
Emil Olson	28	9 25
Thomas Jenkins	154X	35 20
S. O. Hamilton	62	80 00
Fred Pack	A 30	32 88
Chas. Sheppard	122	42 12
Dr. R. Taylor	135	40 00
Jos. Murphy	13	80 00
Jos. Murphy	10	80 00
Thos. R. Bennett	71	1 25
Lottie L. Cobb	128	79 50
W. I. Layton	36	80 00
Antsonet Treganza	38	40 00
C. N. Ray	34	80 00
D. D. Ray	30	104 52
W. H. Chester	A 11	10 00
John Dahlke	153	40 00
Chas. W. Woody	159	40 00
Wm. Laurenson	A 14	40 00
C. E. Layton	33	80 00
C. A. Black	63	53 10

L. F. King	68	50 00
E. W. Ward		16 25
S. F. Johnson	5	40 00
James S. Hyde	15	40 00
E. G. Widmann	53	80 00
Jos. A. Stone	A-31	1 70
T. W. Monell	99	40 00
T. W. Monell	43	40 00
T. W. Monell	47	40 00
[fol. 300] E. G. Widmann	46	80 00
E. G. Widmann	49	80 00
Wm. Laurenson	A-37	40 00
John Ware	12	80 00
J. I. Sheppard	A-4	60 00
E. H. Welling	7	80 00
E. E. Susong	19	80 00
M. W. Aldridge	3	40 00
D. C. Olmstead	75	52 80
Chris Knudson	94	5 00
C. K. Hensman	59	23 40
W. H. Chester	91	40 00
C. H. Norton	A-23	15 00
Mary F. Zoerb	80	80 00
J. C. Tewell	79	52 80
Guy E. Tripp	90	18 75
S. O. Hamilton	66	80 00
E. B. Pearson	A-38½	20 00
Elmer T. Richards	114	40 00
W. T. Morley	86	40 00
L. D. Brown	121	80 00
C. H. Royster	82	80 00
W. F. Kasiska	81	80 00
M. L. Johnson	A-17	2 41
J. B. Willman	133	40 00
R. L. Van Eaton	40	40 00
Olivia J. Hanchett	130	80 00
John S. Hyde	A-36	2 00
L. C. Farr, Jr.	183	34 32
L. C. Farr, Jr.	173	53 94
D. W. Evans	22	80 00
S. O. Hamilton	124	105 00
W. H. Chester	160	40 00
W. L. Anderson	161	40 00

John Anderson	140	40 00
L. A. Trowbridge	129	80 00
Robert Dill	137	53 40
Chris Knudson	173	23 00
[fol. 301] Heber F. Johnson	191	10 00
S. F. Johnson	A-42	2 00
C. D. McCormick	192	15 00
W. R. Ferris	A-36	10 00
L. H. McCormick	193	15 00
C. E. Layton	A-44	1 00
W. R. Ferris	A-45	5 00
M. J. Richards	A-46	5 44
Peter W. Olson	92	45 85
W. R. Ferris		5 00
Peter W. Olson	A-47	62 12
L. H. McCormick	198	10 00
Ferris & Pinkney	P-11	17 72
Ira Goff	200	82 87
Geo. O. Maughan		42 00

And in accordance with law, so many shares of each parcel of such stock as may be necessary will be sold at the office of the Intermountain Farmers' Equity at Downey, Idaho, on the twenty-fifth day of May, 1918, at 2 o'clock p. m. of such date, to pay delinquent assessment thereon, together with the costs of advertising and expenses of sale.

Jesse S. Richards, Secretary, with location of office at Downey, Idaho.

DEFENDANT'S EXHIBIT No. 6

Minutes of the Directors of the Portneuf Marsh Valley Canal Company

Adjournment of the Board of Directors of the Portneuf-Marsh Valley Canal Co. held Aug. 12, 1918 at the regular [fol. 302] place of business. All of the members of the Board were present except Mr. Robinson.

Meeting was called to order by President Hyde.

A motion duly made and seconded an assessment of $1.00 per share was levied on the capital stock of the company. Same to be due Oct. 1, 1918.

Motion passed unanimously.

Notice of Assessment

Portneuf Marsh Valley Canal Co. Location of Principal Place of business, Downey, Idaho.

Notice is hereby given that at a meeting of the directors held on the 12th day of August, 1918, an assessment of $1.00 per share, cash or labor, was levied on the capital stock of the corporation, payable to the Treasurer of the Company at Downey, Idaho, on the 1st day of October, 1918; any stock upon which this assessment remains unpaid on the 1st day of October, 1918 will be delinquent and advertised for sale at public auction and unless payment is made before, will be sold on the 7th day of December, 1918 to pay delinquent assessments together with the costs of advertising and expenses of sale.

Jesse S. Richards, Secretary, With office at Intermountain Farmers' Equity, Downey, Idaho.

[fol. 303] Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Frank B. Porter, being duly sworn, depose and say that I am the publisher of The Downey Idahoan, a weekly newspaper published at Downey, Idaho, Bannock, County, in the State of Idaho. That the Assmt. Notice, a true copy of which is hereto attached, was published in The Downey Idahoan for three consecutive issues first publication having been made on the 13 day of Sept., 1918 and the last publication having been made on the 27 day of Sept. 1918.

That said paper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

Frank B. Porter.

Subscribed and sworn to before me this 10-11-23.
Fred Waite, Notary Public. My commission expires September 1, 1924. (Seal.)

[fol. 304] **Notice of Sale of Delinquent stock**

Portneuf-Marsh Valley Canal Company, a Corporation—Location of Principal Place of Business, Downey, Idaho

There is delinquent upon the following described stock on account of assessments levied on the 1st day of October, 1918, the several amounts set opposite the names of the respective stockholders:

Name	Cont. No	Amt
James H. Gibbly	6	80 00
David Christensen	78	40 00
Emma Beckley	101	40 00
A. T. Allen	163	40 00
Sarah L. Jenkins	154X	23 94
A. F. Daughenbaugh	54	100 68
S. O. Hamilton	62	151 30
S. Dean Vincent	72	40 00
Fred J. Pack	A 30	20 30
John H. Hartvigsen	73	40 00
O. A. Smith	11	80 00
Lottie L. Cobb	128	79 50
Chas. Sheppard	122	36 52
Thos. R. Bennett	71	80 00
Joe Brown	27	80 00
Frank Flint	8	40 00
Antonnet Treganza	38	48 80
Arley Dewey	50	40 00
C. N. Ray	34	80 02
D. C. Ray	30	104 82
N. J. Hartvigsen	76	40 00
W. H. Chester	A 11	10 00
John Dahlke	153	40 00
Chas. W. Woody	159	40 00
[fol. 305] F. L. Olmstead	51	80 00
Wm. Laurensen	A 14	40 00
Theo. Britton	126	40 00
Jesse S. Richards	18½	40 00
C. E. Layton	33	80 00
C. A. Black	63	53 40
C. C. Richards	106	40 00
Laurence W. Richards	18½	40 00

Name	Cont. No.	Amt.
C. C. Richards	102	40 00
Jesse S. Richards	26	80 00
C. C. Richards	107	40 00
M. Richards	204	5 00
M. Richards	205	5 00
E. W. Ward		80 00
Geo. T. Hyde	A-5	60 00
Geo. T. Hyde	A-19	77 20
S. F. Johnson	5	40 00
John S. Hyde	15	40 00
Jos. A. Stones	A-31	50 00
T. W. Bennett	110	40 00
Fred Benninger	134	40 00
Fred Benninger	56	80 00
John Newbold	A-7½	40 00
Peter Olson	92	80 00
A. T. Allen	93	80 00
Wm. Laurensen	A-37	40 00
F. D. Catheart	17	80 00
John Ware	12	80 00
J. I. Sheppard	A-4	60 00
R. E. Bennett	136	8 50
E. H. Welling	7	80 00
E. E. Susong	19	80 00
M. W. Aldridge	3	40 00
D. C. Olmstead	75	53 10
Chris Knudsen	94	5 00
C. K. Hensman	59	23 35
W. H. Chester	91	40 00
F. L. Olmstead	112	40 00
[fol. 306] Otto Roundy	85½	40 00
N. O. Pehrson	100	40 00
N. S. Coffin	74	40 00
C. Leader	138	40 00
C. Leader	184	15 00
Geo. W. Hobbs	180	50 20
C. Dolder	A-129	20 00
Arley Dewey	151	40 00
Leo V. Johnson	A-23	15 00
M. A. Thomas	A-34	2 00
Harry M. Tibbetts	24	80 00

Name	Cont. No.	Amt.
Harry M. Tibbetts	14	80 00
Guy E. Tripp	90	63 30
Jesse S. Richards	25	55 00
S. O. Hamilton	66½	40 00
J. C. Tewell	79	52 80
Andrew J. Newbold	A-38	40 00
Fred Benninger	144	40 00
J. C. Mock	145	40 00
W. T. Morley	86	40 30
T. D. Wallace		5 00
C. Leader	2	80 00
Mary E. Mock	21	80 00
W. T. Marley	85	40 30
E. C. White	121	80 00
Chas. Royter	82	80 00
A. L. Oson	87	1 50
Willard Kingsford	81	80 00
R. H. Christensen	174	40 00
M. L. Johnson	A-17	42 60
Olivia J. Hanchett	130	80 30
Jos. Simpson	103	53 14
F. D. Cathcart	39	80 00
John S. Hyde	A-36	2 00
Lucian C. Farr	178	5 00
L. C. Farr, Jr.	183	15 00
Lucian C. Farr	182	21 00
[fol. 307] L. C. Farr, Jr	179	37 50
D. W. Evans	22	80 00
W. H. Chester	160	40 00
S. O. Hamilton	124	48 03
W. I. Anderson	161	40 00
L. A. Trowbridge	129	80 30
Chas. W. Blake	96	40 00
Ida P. Reisner	A-39	65 00
Jos. A. Brim		10 00
J. J. Barnes		30 00
Harold E. Tripp	187	24 71
C. W. Hancock	A-48	52 32
C. Leader	189	10 00
John Cyson	A-40	63 27
Guy E. Tripp	190	10 00

Name	Cont. No.	Amt.
Chris Knudson	173	23 30
Heber F. Johnson		20 00
Heber F. Johnson	191	10 00
C. D. McCormick	192	15 00
L. H. McCormick	193	15 00
C. E. Layton	A-44	1 00
W. R. Ferris	A-35	5 00
Arley Dewey	195	10 00
Arley Dewey	94	05 00
C. Leader	P-9	10 00
Peter W. Olson	A-47	31 60
S. F. Johnson	A-42	1 00
L. H. McCormick	198	10 00
H. M. Tibbetts	P-10	10 43
John E. Criddle	P-12	2 86
Ferris & Pinkney	P-11	82 02
Lorin Criddle	P-13	9 83
Leo V. Johnson	P-14	25 00
Wm. M. Thomas	P-12	2 66
Morris Simpson		65 00

And in accordance with law, so many shares of each parcel of such stock as may be necessary will be sold at Downey, [fol. 308] Idaho on the 28th day of December, 1918, at 2 o'clock p. m. of such date, in front of the Intermountain Farmers' Equity, Downey, Idaho, to pay delinquent assessment thereon, together with the costs of advertising and expenses of sale.

Jesse S. Richards, Secretary, with location of office at Downey, Idaho.

P. S. Owing to the fact that the bookkeeper was sick with influenza, delinquent stock missed publication for sale on December 7th, as per notice of assessment, consequently the sale was postponed for proper publication.

Defendants' Exhibit No. 7

Minutes of the Board of Directors of the Portneuf-Marsh Valley Canal Company

Held in the state office, Mar. 3rd, 1919. All members present. Minutes of the previous meeting were read and approved.

Question of levying an assessment on all of the capital stock of the Portneuf-Marsh Valley Canal Co. coming before the board of Directors. Willard made a motion that was seconded by J. L. Hartvigsen that an assessment of $1.00 per share be levied on all of the capital stock of the company to be used for maintaining operating conducting the business of the company and meeting the obligations of the said company. That said assessment be paid to Willard Kingsford, secretary of said company at his office in Downey, Idaho, on the 1st day of April, 1919.

[fol. 309] Any stock upon which the above assessment may remain unpaid on the 1st day of April, 1919, will be delinquent and if payment is not made on or before May 1st, 1919, will be advertised for sale at public auction and unless payment together with costs of advertising is made before, will be sold at two o'clock p. m. on the 24th day of May, 1919 at the office of the Intermountain Farmers' Equity to pay delinquent assessment, together with cost of advertising and cost of sale.

The above motion carried by unanimous vote of all the members of the Board.

Notice of Assessment

Portneuf-Marsh Valley Canal Company, Downey, Idaho, Principal Place of Business

Notice is hereby given that at a meeting of the board of the Portneuf Marsh Valley Canal Co. held on the 3rd day of March, 1919, an assessment of one dollar per share was leived on the capital stock of the corporation payable in cash or labor at its place of business at Downey, Idaho on the 1st day of April, 1919.

Any stock on which this assessment may remain unpaid on the 1st day of April, 1919, will be delinquent and if pay-

ment is not made before May 1st, 1919, will be advertised for sale at public auction and unless payment together with cost of advertising, is made will be sold at 2 o'clock P. M. on the 24th day of May, 1919, at the office of the Intermountain Farmers' Equity to pay the delinquent assess-
[fol. 310] ment, together with cost of advertising and expense of sale.

Willard Kingsford, Secretary-Treasurer.

Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Frank B. Porter being duly sworn, depose and say that I am the publisher of The Downey Idahoan, a weekly news paper published at Downey, Idaho, Bannock county, in the State of Idaho. That the Assmt. Notice, a true copy of which is hereto attached, was published in The Downey Idahoan for three consecutive issues, first publication having been made on the 28 day of Mar. 1919 and the last publication having been made on the 11 day of April, 1919.

That said paper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

Frank B. Porter.

Subscribed and sworn to before me this 10 11 23. Fred Waite, Notary Public. My commission expires September 1, 1924. (Seal.)

[fol. 311] Notice of Sale of Delinquent Stock

Portneuf-Marsh Valley Canal Company, a Corporation—Location of Principal Place of Business, Downey, Idaho

There is delinquent upon the following described stock on account of assessments levied on the 3rd day of March, 1919, the several amounts set opposite the names of the respective —:

Name	Cont. No	Amt
James H. Gibby	6	80 00
Andrew T. Allen	163, 93	120 00
Emil Olson	28	40 00
Thomas R. Bennett	71	80 00
Antionet Treganza	38	40 00
E. R. Woodruff	50, 151, 194, 195	95 00
W. H. Chester	A 11, 91, 160	90 00
John Dahlke	153	40 00
C. C. Richards	106, 102	80 00
J. S. Richards	25, 26	160 00
C. C. Richards, Jr.	107	40 00
L. M. Richards	204, 205	10 00
A. F. Daughenbaugh	16	80 00
David Rishton	A 4	20 00
M. W. Aldredge	3	40 00
C. K. Hensman	59	23 35
Otto Roundy	85	40 00
C. J. Coffin	74	40 00
Leo V. Johnson	A 23	15 00
M. A. Thomas	A 35	2 00
Harry M. Tibbetts	P 10, 14, 24	170 43
J. C. Tewell	79	52 80
Guy E. Tripp	180, 90	50 00
[fol. 312] T. D. Staves	97	40 00
Andrew Newbold	A 38	17 69
Granite Realty Co.	87, 96½	80 00
Lucian C. Farr	178, 179, 182	53 52
A. W. Farr	183	14 70
Wm. I. Anderson	161	40 35
John Anderson	140	50 00
Ida Pauline Reisner	A 39	65 00
Chris Knudsen	173, 94	16 95
Heber F. Johnson	191, and 20 acre contract	30 30
L. H. McCarmick	193, 198	25 00
C. E. Layton	A 44	1 00
Ferris & Pinkney	P 11	17 72
Lawrence W. Richards	18	40 00

And in accordance with law, so many shares of each parcel of such stock as may be necessary will be sold at Downey, Idaho, on the 31st day of May, 1919, at 2 o'clock p. m. of such date, in front of the Intermountain Farmers'

Equity, Downey, Idaho, to pay delinquent assessment thereon, together with the costs of advertising and expenses of sale.

Willard Kingsford, Secretary, with location of office at Downey, Idaho.

Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Frank B. Porter being duly sworn, depose and say that I am the publisher of The Downey Idahoan, a weekly news paper published at Downey, Idaho, Bannock County, [fol. 313] in the State of Idaho. That the Delinquent Notice, a true copy of which is hereto attached, was published in The Downey Idahoan for two consecutive issues first publication having been made on the 16 day of May, 1919 and the last publication having been made on the 23 day of May, 1919.

That said paper has been continuously and uninterrupt edly published in said county during a period of seventy-eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

Frank B. Porter.

Subscribed and sworn to before me this 10-11-23. Fred Waite, Notary Public. My commission expires September 1, 1924. (Seal.)

Defendants' Exhibit No. 8

Minutes of the Board of Directors of the Portneuf-Marsh Valley Canal Company

Held in the State office September 2nd, 1919. All the members of the Board of Directors were present.

Question of levying an assessment for the maintenance of the Canal system coming before the Board of Directors.

Mr. J. L. Hartvigsen made a motion which was seconded by Moses Christiansen that an assessment be levied on all of the capital stock of the Portneuf-Marsh Valley Canal Company, for the purpose of maintaining and operating

[fol. 314] the said system and the works thereof, and meeting the obligations of the said company and any other purposes that the said Board of Directors may deem it necessary for the successful operation of the said canal system.

The secretary was authorized to publish notice of assessment acording to law.

Said assessment to be payable to Willard Kingsford, secretary of the said company at his office in Downey, Idaho, September 22nd, 1919. Any assessments thereon which shall remain unpaid on the 1st day of October, 1919, shall be delinquent and will be sold on the 25th day of Nov. 1919, to pay delinquent assessment together with cost of advertising and cost of sale.

Notice of Assessment

Portneuf-Marsh Valley Canal Company, Downey, Idaho, Principal Place of Business

Notice is hereby given that at a meeting of the board of Directors of the Portneuf-Marsh Valley Canal Co. held on the 2nd day of Sept., 1919, an assessment of one dollar per share was levied on the capital stock of the corporation payable in cash or labor at its place of business at Downey, Idaho, on the 1st day of October, 1919.

Any stock on which this assessment may remain unpaid on the 1st day of October, 1919, will be deliquent and if payment is not made before Nov. 1st, will be advertised for sale at public auction and unless payment together with cost of advertising, is made before will be sold at 2 o'clock [fol. 315] P. M. on the 25th day of November, 1919 at the office of the Intermountain Farmers' Equity to pay the delinquent assessment, together with cost of advertising and expense of sale.

Willard Kingsford, Secretary-Treasurer.

Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Frank B. Porter being duly sworn, depose and say that I am the publisher of The Downey Idahoan, a weekly newspaper published at Downey, Idaho, Bannock County, in the

State of Idaho. That the Assmt. Notice, a true copy of which is hereto attached, was published in The Downey Idahoan for three consecutive issues first publication having been made on the 12 day of Sept., 1919 and the last publication having been made on the 26 day of Sept., 1919.

That said paper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

Frank B. Porter.

Subscribed and sworn to before me this 10-11-23. Fred Waite, Notary Public. My commission expires September 1, 1924. (Seal.)

[fol. 316] Notice of Sale of Delinquent Stock

Portneuf-Marsh Valley Canay Company, Corporation—Location of Principal Place of Business, Downey, Idaho

There is delinquent upon the following described stock on account of assessments levied on the 2nd day of September, 1919, the several amounts set opposite the respective names.

Name	Cont. No	Amt.
Merrill & Richards, 5 acres of No	A-46	5.00
Peter W. Olsen	A-47	31.61
John Layton		40.00
H. M. Tibbits	P-10	10.43
John E. Criddle	P-12	2.85
Lorrin Criddle	P-13	9.83
Leo V. Johnson	H	25.00
Morris Simpson		65.00
Ira Goff	200	25.72
Lawrence W. Richards	½ of No. 18	40.00
Robert Dill		80.00
Peter Olson	165	40.00
S. D. Vincent	72	40.00
S. O. Hamilton	62	27.90
Fred Pack	30	20.00
H. W. Wistner	64	52.74
R. D. Taylor	134	40.00
Thomas R. Bennett	71	12.25

Name	Cont. No.	Amt.
F. W. Fauteck	38	40.00
F. C. Knight	4	80.00
Frank Flint	44	40.00
Antionet Treganza	38	40.00
C. N. Ray	34	80.00
D. C. Ray	30	104.52
[fol. 317] N. J. Hartvigsen	48	40.00
E. R. Woodruff	50	40.00
W. H. Chester	A 11	10.00
Leander Whitaker	20.00	39.97
Geo. McAlphen	68	71.00
C. C. Richards	106	40.00
Jesse S. Richards	½ of No. 18	40.00
C. C. Richards	102	40.00
J. S. Richards	26	80.00
C. C. Richards	107	40.00
L. M. Richards	204	5.00
L. M. Richards	205	5.00
Ephriam Dastruph		80.00
S. F. Johnson	5	40.00
J. S. Hyde	15	40.00
T. W. Bennett	110	40.00
O. L. Peterson	134	40.00
O. L. Peterson	56	80.00
John Newbold	½ of A 7	40.00
Peter W. Olson	92	40.00
Peter W. Olson	95	80.00
Leroy Shepard	94	60.00
Mrs. E. V. W. Stanrod	A 15	58.00
Mrs. R. E. Bennett	136	40.00
E. H. Welling	7	80.00
E. E. Susong	10	80.00
Robert C. Hardwick	23	40.00
D. C. Olmstead	73	52.80
Chris Knudson	94	5.00
Nels O. Pehrson	100	40.00
W. H. Chester	91	40.00
H. A. Peterson & Co.	85	40.00
Otto Roundy	½ 85	40.00
C. J. Coffin	74	35.00
Geo. W. Hoggs	180	40.00

Name	Cont. No.	Amt.
E. R. Woodruff	151	39.70
Leo Johnson	A 23	14.70
Vinnie R. Walling	42	80.00
[fol. 318] Harry M. Tibbets	136	80.00
Harry M. Tibbits	14	80.00
J. C. Tewell	79	52.80
Guy E. Tripp	90	39.70
Jesse S. Richards	25	80.00
Sofia C. Roberts	65	40.00
T. D. Staves	97	40.00
Bert Chaney	175	40.00
Andrew Newbold	A 38	40.00
C. A. Royter	82	66.63
A. L. Olson	87	40.00
R. H. Christensen	174	40.00
M. L. Johnson	A 17	42.60
John S. Hyde	A 36	2.00
James Frazer	48	80.00
Lucian C. Farr	178	5.00
A. W. Farr	183	15.00
Lucian C. Farr	182	21.00
Lucian C. Farr	179	27.56
T. M. Edwards	A 1	160.00
S. O. Hamilton	124	105.00
W. H. Chester	160	40.00
John Anderson	140	40.30
Charles W. Blake	96	40.30
Ida Pauline Reisner	A 39	65.00
Jos. A. Brim		10.00
Robert Dill	137	53.40
J. J. Barnes		30.00
Harold E. Tripp	15 acres No. 187	15.00
Lewis F. Koch	A 48	36.37
Guy E. Tripp	10 acres No. 190	9.70
Chris Knudson	173	23.00
Heber F. Johnson	10 acres No. 191	10.09
Heber F. Johnson		18.80
S. F. Johnson	A 42	1.00
C. E. Layton	A 44	1.00
[fol. 319] E. R. Woodruff	5 acres No. 94	5.00
E. R. Woodruff	10 acres No. 195	10.00
Merriland Richards	A 46	5.44

And in accordance with law, so many shares of each parcel of such stock as may be necessary will be sold at Downey, Idaho, on the 26th day of November, 1919, at 2 o'clock p. m. of such date, in front of the Intermountain Farmers' Equity, Downey, Idaho, to pay delinquent assessment thereon, together with the costs of advertising and expense of sale.

Willard Kingsford, Secretary, with location of office at Downey, Idaho.

Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Frank B. Porter, being duly sworn, depose and say that I am the publisher of The Downey Idahoan, a weekly newspaper published at Downey, Idaho, Bannock County, in the State of Idaho. That the Delinquent Notice, a true copy of which is hereto attached, was published in The Downey Idahoan for two consecutive issues first publication having been made on the 14 day of Nov., 1919 and the last publication having been made on the 21 day of Nov., 1919.

That said paper has been continuously and uninterruptedly published in said county during a period of seventy eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within [fol. 320] the meaning of the laws of the State of Idaho.

Frank B. Porter.

Subscribed and sworn to before me this 10-11-23. Fred Waite, Notary Public. My commission expires September 1, 1924. (Seal.)

Defendants' Exhibit No. 9

Minutes of the Board of Directors of the P. M. V. C. Co.

Read Feb. 4th. All members present.

Moved by C. Leader seconded by J. W. Christiansen that the Board levy an assessment of $1.50 per share on all of the capital stock of the company for maintenance and other necessary expenses, the motion was passed by unanimous consent of the Board.

Notice of Assessment

Portneuf-Marsh Valley Canal Company, Downey, Idaho, Principal Place of Business

Notice is hereby given that at a meeting of the Board of Directors of the Portneuf-Marsh Valley Canal Company, held on the 4th day of February, 1920, an assessment of $1.50 per share was levied on the capital stock of the corporation payable in cash or labor at its place of business at Downey, Idaho, on the 1st day of April, 1920.

[fol. 321] Any stock on which the assessment may remain unpaid on the 1st day of April, 1920 will be delinquent and if payment is not made before May 1st, 1920, will be advertised for sale at public auction and unless payment together with cost of advertising is made before, will be sold at 2 o'clock P. M. on the 24th day of May, 1920 at the office of the Intermountain Farmers' Equity, to pay the delinquent assessment, together with cost of advertising and expense of sale.

W. J. Christensen, Secretary Treasurer.

Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Frank B. Porter being duly sworn, depose and say that I am the publisher of the Downey Idahoan, a weekly newspaper published at Downey, Idaho, Bannock County, in the State of Idaho. That the Assmt. Notice, a true copy of which is hereto attached, was published in the Downey Idahoan for three consecutive issues first publication having been made on the 5 day of Mar. 1920 and the last publication having been made on the 17 day of Mar. 1920.

That said paper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within the [fol. 322] meaning of the laws of the State of Idaho.

Frank B. Porter.

Subscribed and sworn to before me this 10 11 23. Fred Waite, Notary Public. My commission expires September 1, 1924. (Seal.)

Notice of Sale of Delinquent Stock

Portneuf Marsh Valley Canal Company, Corporation—Location of Principal Place of Business, Downey, Idaho

There is delinquent upon the following described stock on account of assessments levied on the 4th day of February, 1920, the several amounts set opposite the respective names:

Name	Cert. No.	Amt
T. D. Wallace	6	120 00
C. D. McCormick	181	62 00
A. A. Ballard	A 13	6 15
P. W. Olsen	163	60 00
Emil Olsen	28	59 70
S. O. Hamilton	62	120 00
W. J. Bybee	24	35 00
Fred Pack	A 30	38 18
Jos. A. Stone	A 31	75 00
T. W. Bennett	110	60 00
Geo. D. Maugham	½ of A 7	100 00
John Newbold	½ of A 7	60 00
A. F. Daughenbaugh	16	120 00
Wm. Laurensen	A 37	60 00
[fol. 323] E. W. Olsen	92	120 00
P. W. Olsen	93	120 00
Daw Lewis	20 A. of A 4	30 00
Mrs. E. V. W. Stanrod	A 15	87 50
Mrs. R. E. Bennett	136	60 00
E. E. Susong	19	120 00
W. H. Chester	91	60 00
H. A. Peterson Co.	85	60 00
Otto Roundy	40 A. of 45	60 00
Wm. Laurensen	A 14	60 00
Dan Ware	A 51	80 00
Geo. McAlpin	68	113 00
C. C. Richards	106	60 30
J. S. Richards	26	120 30
J. W. Brown	27	120 00
C. N. Ray	34	120 00
D. C. Ray	30	156 78
W. H. Chester	A 11	15 00
C. C. Richards	107	60 30

Name	Cont. No.	Amt.
L. M. Richards	204	7 80
L. M. Richards	205	8 30
Ephram Dastrup	?	120 30
O. W. Bishop	109	80 02
M. A. Thomas	A-35	1 47
John Anderson	140	0
Granite Realty Co.	91½	60
Harold E. Tripp	15 acres of 187	22 50
Elizabeth H. Burhoe	1,555	120 00
S. F. Johnson	5	60 00
John S. Hyde	15	60 00
Heber F. Johnson	10 A. of 191	15 00
C. D. McCormick	15 A. of No. 192	22 50
L. H. McCormick	15 A. of No. 193	22 50
C. E. Layton	A 44	1 50
Merrill and Richards	A 46	15 66
Peter W. Olson	A 47	47 40
L. H. McCormick	198	15 00
Heber F. Johnson	44	30 00
[fol. 324] Moroni Almond	½ of A 45	7 50
John Layton	(?)	60 00
H. M. Tibbitts	P-10	16 54
Paul Garwin	199	15 00
Ira Goff	200	60 00
Lawrence W. Richards	½ of No. 18	60 60
Jesse S. Richards	½ of No. 18	60 30
C. C. Richards	102	60 30
M. L. Johnson	A 17	63 90
John S. Hyde	A-36	3 00
James Frazer	48	98 80
S. O. Hamilton	124	157 50
Wm. I. Anderson	161	60 10
Chas. W. Blake	96	60 30
Ida Pauline Reisner	A 39	97 50
Guy E. Tripp	10 A. of No. 190	15 00
C. J. Coffin	74	60 00
Mary F. Zoerb	80	120 00
Charles Webber	60	60 00
Harry M. Tibbitts	24	120 00
Harry M. Tibbitts	14	120 00
J. C. Tewell	79	79 20

Name	Cont. No.	Amt.
Guy E. Tripp	90	60 00
Jesse S. Richards	25	120 30
S. O. Hamilton	66½	60 00
S. D. Staves	97	60 30
Bert Chaney	175	60 00
Andrew Newbold	A-38	30 50
A. J. Newbold	½ of A-38	31 70
Elmer T. Richards	114	60 00
W. T. Morley	86	60 00
Granite Realty Co.	½ 87	60 00

And in accordance with law, so many shares of each parcel of such stock as may be necessary will be sold at Downey, Idaho, on the 24 day of May, 1910, at 2 o'clock p. m. of such date, in front of the Intermountain Farmers' Equity, Downey, Idaho, to pay delinquent assessment [fol. 325] thereon, together with the costs of advertising and expense of sale.

J. W. Christensen, Secretary, with location of office at Downey, Idaho.

Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Frank B. Porter being duly sworn, depose and say that I am the publisher of The Downey Idahoan, a weekly newspaper published at Downey, Idaho, Bannock County, in the State of Idaho. That the Delinquent Notice, a true copy of which is hereto attached, was published in The Downey Idahoan for two consecutive issues first publication having been made on the 14 day of May, 1920 and the last publication having been made on the 21 day of May, 1920.

That said paper has been continuously and uninterruptedly published in said county during a period of seventy eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

Frank B. Porter.

Subscribed and sworn to before me this 10 11 23. Fred Waite, Notary Public. My commission expires September 1, 1924. (Seal.)

[fol. 326] DEFENDANTS' EXHIBIT No. 10

Minutes of the Board of Directors of the Portneuf Marsh Valley Canal Company

Held Aug. 30, 1920, all members of the Board were present.

Question of levying an assessment on the shares of stock of the company being before the Board, the following motion was offered by Moses Christiansen, seconded by C. Leader, to wit:

It is hereby ordered that an assessment of $2.00 per share be and the same is hereby levied on all of the capital stock of the Portneuf Marsh Valley Canal Company for the purpose of maintaining and operating the canal system of said company and works thereof and conducting the business thereof and meeting the obligations thereof.

That the said assessment be payable to J. W. Christiansen, Secretary of said Company, at his office in Downey, Idaho, on the 18 day of September, 1920, and all assessments thereon which are unpaid on the 18 of Sept., 1920, shall be delinquent and thereafter sold as delinquent on the 18 of October, 1920, in accordance with the provisions of the Statute of the State of Idaho.

Motion carried unanimously.

[fol. 327] Notice of Assessment

Portneuf Marsh Valley Canal Company, Downey, Idaho, Principal Place of Business

Notice is hereby given that at a meeting of the Board of Directors of the Portneuf Marsh Valley Canal Company, held August 30, 1920 an assessment of $2.00 per share was levied on the capital stock of the Corporation, payable in cash or labor at its place of business at Downey, Idaho, on the 18th day of September, 1920.

Any stock on which this assessment may remain unpaid on the 18th day of September, 1920, will be delinquent and if payment is not made before the 18th day of October, 1920, will be sold at 2 o'clock p. m. on the 18th day of October, 1920 at the office of the Intermountain Farmers' Equity, to

pay the delinquent assessment, together with cost of advertising and expense of sale.

J. W. Christensen, Secretary and Treas.

40-42.

Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Frank B. Porter being duly sworn, depose and say that I am the publisher of The Downey Idahoan, a weekly newspaper published at Downey, Idaho, Bannock County, in the State of Idaho. That the Assmt. Notice, a true copy of which is hereto attached, was published in The Downey [fol. 328] Idahoan for three consecutive issues first publication having been made on the 3rd day of Sept., 1920 and the last publication having been made on the 17 day of Sept. 1920.

That said paper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

Frank B. Porter.

Subscribed and sworn to before me this 10-11-23. Fred Waite, Notary Public. My commission expires September 1, 1924. (Seal.)

Notice of Sale of Delinquent Stock

Portneuf Marsh Valley Canal Company, a Corporation—Location of Principal Place of Business, Downey, Idaho

There is delinquent upon the following described stock on account of assessments levied on the 30th day of August, 1920, the several amounts set opposite the respective names.

Name	Cert. No.	Shares	Amt.
A. W. Farr	183	15	$30 00
Lucian C. Farr	182	21	42 00
Lucian C. Farr	179	27.56	56 78
Berry S. Crow	A 10	80	160 00
Berry S. Crow	57	80	160 00

Name	Cont. No	Shares	Amt.
Jerry Christiansen	A 32	1	2.00
M. V. Burton	A 41	40	73.30
[fol. 329] S. O. Hamilton	124	105	210.00
Wm. I. Anderson	161	40	80.30
John Anderson	140	40	80.00
Ida Pauline Reisner	A 39	65	130.00
Jos. A. Brim	(?)	10	20.00
Robert Dill	137	53.40	106.80
J. J. Barnes	(?)	30	60.00
Harold E. Tripp	15 A of No. 187	15	30.00
L. F. Koch	A 48	52.32	104.64
C. Leader	10 a of 189	10	20.00
John Dyson	A 40	50	100.00
Guy E. Tripp	10 a of 190	10	20.00
E. E. Gilbert	173	23	46.00
Heber F. Johnson	10 a of 191	10	20.00
Heber F. Johnson	44	20	40.30
S. F. Johnson	A 42	1	2.00
C. C. McCormick	15 a of 192	15	30.00
E. G. Weidmann	186	10	20.00
L. H. McCormick	15 a of 193	15	30.00
N. J. Hartvigsen	A 44	1	2.00
E. A. Fisher	5 A of No. 194	5	10.00
E. A. Fisher	10 a of No. 195	10	20.00
E. Dolder	A 29	20	36.25
E. A. Fisher	151	40	80.00
Lee Johnson	A 23	3.66	7.32
C. Norton	A 23	11.34	22.68
Mary F. Zorb	80	80	123.00
Charles Webber	60	40	80.00
Vinnie R. Walling	42	80	160.00
M. A. Thomas	A 35	2	4.00
Harry M. Tibbetts	24	80	160.00
Harry M. Tibbetts	14	80	160.00
J. C. Towell	79	52.80	105.60
Guy E. Tripp	20	40	80.00
Jesse Richards	65	80	160.00
[fol. 330] Sophia C. Roberts	66½	40	80.00
S. O. Hamilton	175	40	80.00
Bert Chaney		40	80.00
Andrew Newbold	A 38	20	40.50

Name	Cont. No	Shares	Amt.
A. J. Newbold	½ of A 38	20	41.40
W. T. Morley	86	40	80.00
T. D. Wallace	(?)	5	10.00
C. Leader	2	80	160.00
C. A. Royter	A 2	80	160.00
R. E. Davis	½ 87	40	92.15
Willard Kingsford	81	80	160.00
E. H. Christensen	174	40	80.00
Joseph Simpson	123	40	80.00
John S. Hyde	A 35	2	4.00
James Frazer	48	80	160.00
Lucian C. Farr	178	5	10.00
T. W. Bennett	110	40	80.00
E. G. Weidmann	29	40	80.00
E. G. Weidmann	43	40	80.00
E. G. Weidmann	47	40	80.00
E. G. Weidmann	46	80	160.00
E. G. Weidmann	49	80	160.00
Geo. D. Maughan	½ A 7	40	80.00
John Newbold	½ A 7	40	80.00
Lars Johnson	A 37	40	80.00
P. W. Olson	92	80	160.00
P. W. Olson	93	80	160.00
John Ware	12	80	160.00
J. I. Shepard	A 4	60	120.00
Marrian Aller	20 a of A 4	20	40.00
R. E. Bennett	136	40	80.00
E. H. Welling	7	80	160.00
E. E. Susong	19	80	160.00
Robert L. Hardwick	23	40	80.00
E. E. Gilbert	34	5	10.00
Nels O. Pehrson	100	40	80.00
C. K. Henseman	59	23.35	46.70
W. H. Chester	91	40	80.00
[fol. 331] Dan Ware	112	40	80.00
Otto C. Backman	9	80	160.00
H. A. Peterson	A 5	40	80.00
Otto Roundy	40 a of No. 85	40	80.00
C. J. Coffin	74	40	80.00
G. A. Sievers	125	52.60	105.20
C. Leader	138	40	80.00
C. Leader	184	15	30.00

Name	Cont. No.	Shares	Amt
C. N. Ray	34	80	160.00
D. C. Ray	30	104.32	208.64
N. J. Hartvigsen	76	40	80.00
E. A. Fisher	50	40	80.00
W. H. Chester	A 11	10	20.00
John Dahlke	153	40	80.00
Leander Whitaker	A 20	39.79	79.94
Charles W. Woody	159	40	80.00
F. L. Barnes	A 8	10	20.00
Lars Johnson	A 14	40	80.00
Dan Ware	51	80	160.00
Geo. McAlpine	68	80	160.00
Jesse Richards	106	40	80.00
Jesse Richards	½ 18	40	80.00
Jesse Richards	102	40	80.00
Jesse Richards	28	80	160.00
Jesse Richards	107	40	80.00
J. L. Hartvigsen	113	40	80.00
Jesse Richards	204	5	10.00
J. L. Hartvigsen	44	40	80.00
L. M. Richards	205	5	10.00
J. L. Hartvigsen	A 3	1	2.00
Willard Kingsford	A 2	40	80.00
Geo. T. Hyde	A 5	60	120.00
Geo. T. Hyde	A 19	76.20	152.40
S. F. Johnson	5	40	80.00
J. S. Hyde	15	40	80.00
E. G. Weidmann	53	80	160.00
Jos. A. Stone	A 31	50	100.00
Robert Dill	111	80	160.00
[fol. 332] T. D. Wallace	6	80	160.00
S. W. Wooden	98	40	80.00
D. W. Christensen	78	40	80.00
Charles D. McCormick	181	40	80.00
Emma Beckley	101	40	80.00
E. L. Matoon	171	53.34	106.68
A. A. Ballard	A 13	4.10	8.20
P. W. Olson	163	40	80.00
Emil Olson	28	40	80.00
Sarah L. Jenkins	154	36.20	72.40
J. W. Pehrson	72	40	80.00

Name	Cont. No.	Shares	Amt.
S. O. Hamilton	62	80	160 00
F. L. Barnes	29	40	80 00
W. J. Bybee	A-24	40	80 00
Lorenzo Biggs	70	80	160 00
Jerry Christiansen	86	40	80 00
M. V. Burton	A-26	1	2 00
Fred Pack	A-30	20	48 00
J. H. Hartvigsen Estate	73	40	80 00
Herriot Riddle	1	80	160 00
J. D. Long	64	52 74	105 48
O. A. Smith	11	80	160 00
D. R. Taylor	135	40	80 00
Charles Shepard	122	42 12	84 24
Joseph Murphy	13	80	160 00
Joseph Murphy	10	80	160 00
Thomas R. Bennett	71	80	160 00
L. I. Layton	36	80	160 00
Merrill & Richards	A-46	10 44	10 88
Peter W. Olson	A-47	31 60	63 20
L. H. McCormick	198	10	22 00
John Layton	(2) H	40	80 00
C. Leader	P-9	10	20 00
H. M. Tibbetts	P-10	10 43	21 46
Lorin Criddle	P-13	9 85	19 70
Paul Garwin	199	10	20 00
John E. and Lorin Criddle	(1) H	25	50 00
[fol. 333] Morris Simpson	(2)	65	147 71
Ira Goff	200	40	80 00
Jesse Richards	½ of 18	40	80 60
J. L. Hartvigsen	A-33	1	2 00
A. C. Hancock	(2)	40	80 00
Mary E. Mock	½ of 21	40	80 00

And in accordance with law, so many shares of each parcel of such stock as may be necessary will be sold at Downey, Idaho, on the 18th day of October, 1920, at 2 o'clock p. m. of such date, in front of the Intermountain Farmers' Equity, Downey, Idaho, to pay delinquent assessment thereon, together with the costs of advertising and expense of sale.

J. W. Christensen, Secretary, with location of office at Downey, Idaho.

Affidavit of Publication

STATE OF IDAHO,
County of Bannock, ss:

I, Frank B. Porter, being duly sworn, deposes and say that I am the publisher of The Downey Idahoan, a weekly news paper published at Downey, Idaho, Bannock County, in the State of Idaho. That the Delinquent Notice, a true copy of which is hereto attached, was published in the Downey Idahoan for two consecutive issues first publication having been made on the 1st day of Oct. 1920 and the last publication having been made on the 27 day of Oct. 1920.

[fol. 334] That said paper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

Frank B. Porter.

Subscribed and sworn to before me this 10-11 23. Fred Waite, Notary Public. My commission expires September 1, 1924. (Seal.)

DEFENDANTS' EXHIBIT No. 11

Minutes of the Directors of the Portneuf-Marsh Valley Canal Company

Held in the State office on the 28th day of Feb. 1921. All members present.

Question of levying an assessment on the shares of stock of the Company being before the Board, the following motion was offered by J. W. Christensen and seconded by S. F. Johnson to-wit:

It is hereby ordered that an assessment of $1.00 per share be and the same is hereby levied on all of the capital stock of the Portneuf-Marsh Valley Canal Company for the purpose of maintaining and operating the canal system of said company and works thereof, and conducting the business thereof.

That said assessment be payable to J. W. Christensen, secretary of the Company, at his office in Downey, Idaho, [fol. 335] on the 28th day of Feb., 1921, and all assesments thereon which are unpaid on the 19th day of April, 1921, shall be delinquent and thereafter sold as delinquent on the 21st day of May, 1921, in accordance with the provision of the State of Idaho.

The chairman put the above motion which carried.

Notice of Assessment

Portneuf Marsh Valley Canal Company

Minutes of the Board

Question of levying an assessment on the shares of stock of the Company being before the Board, the following motion was offered by J. W. Christensen and seconded by S. F. Johnson, to wit:

It is hereby ordered that an assessment of $1.00 per share be and the same is hereby levied on all of the capital stock of the Portneuf Marsh Valley Canal Company, for the purpose of maintaining and operating the canal system of said company and the works thereof, and conducting the business thereof and meeting the obligations thereof.

That the said assessment be payable to J. W. Christensen, Secretary of said Company, at his office in Downey, Idaho, on the 28th of March, 1921, and that all assessments thereon which are unpaid on the 19th day of April, 1921, shall be delinquent and thereafter sold as delinquent on the 21st day of May, 1921, in accordance with the provision of the Statute of the State of Idaho.

J. W. Christensen, Secretary.

[fol. 336] Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Frank B. Porter, being duly sworn, depose and say that I am the publisher of The Downey Idahoan, a weekly newspaper published at Downey, Idaho, Bannock County, in the State of Idaho. That the Assmt. Notice, a true copy of which is hereto attached, was published in The Downey

Idahoan for three consecutive issues first publication having been made on the 11 day of Mar. 1921 and the last publication having been made on the 25 day of Mar. 1921.

That said paper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

Frank B. Porter.

Subscribed and sworn to before me this 10-11-23. Fred Waite, Notary Public. My commission expires September 1, 1924. (Seal.)

[fol. 337] Notice

Portneuf Marsh Valley Canal Company, a Corporation—Location of Principal Place of Business, Downey, Idaho

There is delinquent upon the following described stock on account of assessments levied on the 29th day of February, 1921, the several amounts set opposite the respective names.

Name	Cert. No	Shares	Amt
Robert Dill	111	80	$80 00
L. W. Woodin	98	40	40 00
O. W. Bishop	109	52 68	62 68
David Christiansen	78	40	40 00
Charles D. McCormick	181	40	40 00
Emma Beckley	101	40	40 00
A. A. Ballard	A 13	4 10	4 10
P. W. Olson	163	40	40 00
Emil Olson	28	40	40 00
J. W. Pehrson	72	40	40 00
S. O. Hamilton	62	80	80 00
F. L. Barnes	29	40	40 00
W. J. Bybee	A 24	40	40 00
Lorenzo Biggs	70	80	80 00
M. V. Burton	A 26	1	1 00
Gottfred Butler	A130	20	20 00
J. H. Hartvigsen Estate	73	40	40 00
Herriot Riddle	1	80	80 00

Name	Cont. No	Shares	Amt
H. W. Wistner	64	52 74	52 74
Joseph Murphy	13	80	80 00
Jos. Murphy	10	80 00	80 00
Thomas R. Bennett	71	80	80 00
W. I. Layton	30	80	80 00
Hyrum Jensen	8	40	40 00
John Bahlke	153	40	40 00
[fol. 338] Leander Whitaker	A 20	40	40 00
Charles W. Woody	159	40	40 00
Lars Johnson	A 14	40	40 00
Dan Ware	51	40	80 00
H. H. Maguire	126	40	40 00
C. A. Black	63	53 10	53 10
George McAlpine	60	80	80 00
Jesse Richards	106	40	40 00
Jesse Richards	½ No. 18	40	40 00
Jesse Richards	102	40	40 00
Jesse Richards	26	80	80 00
Jesse Richards	107	40	40 00
J. L. Hartvigsen	113	40	40 00
Jesse Richards	204	5	5 00
J. L. Hartvigsen	44	40	40 00
Jesse Richards	205	5	5 00
Ephriam Dastruph	71	80	80 00
J. L. Hartvigsen	A 3	1	1 00
Willard Kingsford	A 2	41	41 00
Geo. T. Hyde	A 5	60	60 00
Geo. T. Hyde	A 19	76 20	76 20
S. F. Johnson	5	40	40 40
J. S. Hyde	15	40	40 00
Jos. Stone	A 31	50	50 00
T. W. Bennett	110	40	40 00
John Newbold	½ A 7	40	40 00
Moses Christiansen	88	40	40 00
Lars Johnson	A 37	40	40 00
Peter W. Olson	92	80	80 00
Peter W. Olson	93	40	40 00
John Ware	12	80	80 00
Marrian Aller	20 a of A 7	20	20 00
John Hurst	A 15	40	40 00
Mrs. R. E. Bennett	136	57 75	57 75

Name	Cont. No.	Shares	Amt.
E. E. Susong	19	80	80 00
D. C. Olmstead	75	52 80	52 80
E. E. Gilbert	94	5	5 00
Niels Pehrson	100	40	40 00
[fol. 339] C. H. Hensman	59	23 35	23 35
Dan Ware	112	40	40 00
H. A. Pederson	85	40	40 00
C. J. Coffin	74	40	40 00
E. Dolder	A 29	20	20 00
C. Norton	A 23	15	15 00
Mary A. Zoerb	80	80	80 00
Charles Webber	60	40	40 00
M. A. Thomas	A 35	2	2 00
Jesse S. Richards	25	80	80 00
Sophia C. Roberts	65	40	40 00
S. O. Hamilton	66½	40	40 00
Bert Chaney	175	40	40 00
Andrew Newbold	A 38	40	40 00
W. T. Morley	86	40	40 00
R. E. Davis	87	40	40 00
Granite Realty Co.	87	40	40 00
M. L. Johnson	A 17	42 62	42 62
Jos. Simpson	103	40	40 00
J. S. Hyde	A 35	2	2 00
James Frazier	48	80	80 00
L. C. Farr	178	5	5 00
A. W. Farr	183	15	15 00
L. C. Farr	182	21	21 00
L. C. Farr	179	27 56	27 56
Berry S. Crow	A 10	80	80 00
Berry S. Crow	37	80	80 00
Wm. L. Anderson	161	40	40 00
Charles W. Blake	96	40	40 00
Granite Realty Co.	96½	40	40 00
Ida Pauline Reisner	A 39	40	40 00
Jos. A. Brim	(?)	40	40 00
S. K. Koch	A 48	52 32	52 32
John Dyson	A 40	50	50 00
E. E. Gilbert	173	23	23 00
Heber F. Johnson	10 A of 191		
Heber Johnson	44	20	20 00

Name	Cont. No.	Shares	Amt.
[fol. 340] C. D. McCormick	15 A of 192		15 00
L. H. McCormick	15 A of 193		15 00
Merrill & Richards	A-46	10 44	10 44
Peter W. Olson	A-47	31 60	31 60
L. H. McCormick	198	10	10 00
John Layton	(?)	40	40 00
Harry M. Tibbits	P-10	10 43	10 43
John E. Criddle	P-12	2 85	2 85
Lorin Criddle	P-13	9 85	9 85
John and Lorin Criddle	(?)	25	25 00
A. C. Hancock	(?)	40	40 00
Will Underwood	(?)	10	10 00

And in accordance with law, so many shares of each parcel of such stock as may be necessary will be sold at Downey, Idaho, on the 24th day of May, 1921, at 2 o'clock p. m. of such date, in front of Downey Garage, Downey, Idaho, to pay delinquent assessment thereon, together with the costs of advertising and expense of sale.

J. W. Christensen, Secretary, with location of office at Downey, Idaho.

Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Frank B. Porter being duly sworn, depose and say that I am the pulisher of The Downey Idahoan, a weekly newspaper published at Downey, Idaho, Bannock County, in the [fol. 341] State of Idaho. That the Assmt. Notice, a true copy of which is hereto attached, was published in The Downey Idahoan for two issues consecutive first publication having been made on the 29 day of April, 1921, and the last publication having been made on the 6 day of May, 1921.

That said paper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

Frank B. Porter.

Subscribed and sworn to before me this 10-11-23. Fred Waite, Notary Public. My commission expires September 1, 1924. (Seal.)

DEFENDANTS' EXHIBIT No. 12

Minutes of the Board of Directors of the Portneuf-Marsh Valley Canal Company

Held in the State office September 23d, 1921. All the members of the Board of Directors present.

Question of levying an assessment on the shares of stock of the Company being before the Board, the following motion was offered by C. Leader and seconded by S. F. Johnson, to-wi:

It is hereby ordered that an assessment of $1.50 per share be and the same is hereby levied on all of the capital [fol. 342] stock of the Portneuf-Marsh Valley Canal Company for the purpose of maintaining and operating the canal system of said company and works thereof, and conducting the business thereof, and meeting the obligations thereof.

That said assessment be payable to J. W. Christensen, Secretary of said Company, at his office in Downey, Idaho, on the 23d day of September, 1921, and all assessments thereon which are unpaid on the 25th day of October, 1921, shall be delinquent and thereafter sold as delinquent on the 7th day of November, 1921, in accordance with the provisions of the Statute of the State of Idaho. Motion carried.

Notice of Assessment

Portneuf-Marsh Valley Canal Company, Ltd.

Minutes of the Board

Question of levying an assessment on the shares of stock of the Company being before the Board, the following motion was offered by C. Leader and seconded by S. F. Johnson, to-wit:

It is hereby ordered that an assessment of $1.50 per share be and the same is hereby levied on all of the capital stock

of the Portneuf-Marsh Valley Canal Company for the purpose of maintaining and operating the canal system of said company and works thereof, and conducting the business thereof and meeting the obligations thereof.

[fol. 343] That the said assessment be payable to J. W. Christensen, Secretary of said Company, at his office in Downey, Idaho, on the 23d day of September, 1921, and all assessments thereon which are unpaid on the 25th day of October, 1921, shall be delinquent and thereafter sold as delinquent on the 7th day of November, 1921, in accordance with the provisions of the Statute of the State of Idaho.

J. W. Christensen, Secretary.

Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Frank B. Porter being duly sworn, depose and say that I am the publisher of the Downey Idahoan, a weekly newspaper published at Downey, Idaho, Bannock County, in the State of Idaho. That the Assmt. Notice, a true copy of which is hereto attached, was published in the Downey Idahoan for three consecutive issues first publication having been made on the 23 day of Sept., 1921 and the last publication having been made on the 6 day of Oct., 1921.

That said paper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

Frank B. Porter.

[fol. 344] Subscribed and sworn to before me this 10-11-23. Fred Waite. My commission expires September 1, 1924

DEFENDANT'S EXHIBIT No. 13

Minutes of the Board of Directors of the Portneuf-Marsh Valley Canal Company

Held March 7th, 1922, in the Stake Office

All the members of the Board of Directors present with the exception of Secretary J. W. Christensen who was not able to be there on account of being ill. President E. W. Olson acting as chairman.

Question of levying an assessment on the shares of stock being before the Board, the following motion was offered by Moses Christiansen and seconded by C. Leader, to-wit:

It is hereby ordered that an assessment of $1.00 per share be and the same is hereby levied on all of the capital stock of the Portneuf-Marsh Valley Canal Co. for the purpose of maintaining and operating the canal system of said company and works thereof, and conducting the business thereof and meeting the obligations thereof. That the said assessment be payable to J. W. Christensen, Secretary of said Company, at his office in Downey, Idaho, on the 20th day of March, 1922, and all assessments thereon, which are unpaid on the 10th day of April, 1922 shall be delinquent and thereafter sold as delinquent on the 24th day of April, 1922, in accordance with the provisions of *of* the Statute of the State of Idaho.

The above motion carried unanimously.

[fol. 345] Notice of Assessment

Portneuf-Marsh Valley Canal Company—Principal Place of Business, Downey, Idaho

At a meeting of the Board of Directors of the Portneuf-Marsh Valley Canal Company, held in the offices of the Portneuf Stake at Downey, March 7, 1922, question of levying an assessment on the shares of the stock of the Company being before the Board the following motion was offered by Moses Christiansen and seconded by C. Leader, to-wit:

It is hereby ordered that an assessment of $1.00 per share be and the same is hereby levied on all of the capital

stock of the Portneuf-Marsh Valley Canal Company, for the purpose of maintaining and operating the canal system of said Company and works thereof, and conducting the business thereof and meeting the obligations thereof. That the said assessment be payable to J. W. Christensen, Secretary of the said Company, at his office in Downey, Idaho, on the 20th day of March, 1922 and all assessments thereon, which are unpaid on the 10th day of April, 1922 shall be delinquent and thereafter sold as delinquent on the 24th day of April, 1922, in accordance with the provisions of the Statutes of the State of Idaho.

J. W. Christensen, Sec. and Treas.

Mar. 17 to 31.

[fol. 346] Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Frank B. Porter being duly sworn, depose and say that I am the publisher of the Downey Idahoan, a weekly newspaper published at Downey, Idaho, Bannock County, in the State of Idaho. That the Assmt. Notice, a true copy of which is hereto attached, was published in the Downey Idahoan for three consecutive issues first publication having been made on the 17th day of Mar. 1922 and the last publication havin been made on the 31 day of Mar. 1922.

That said paper has been continuously and uninterruptedly published in said county during a period of seventy eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

Frank B. Porter.

Subscribed and sworn to before me this 10.11.21. Fred Waite, Notary Public. My commission expires September 1, 1924. (Seal.)

Notice of Sale of Delinquent Stock

Portneuf-Marsh Valley Canal Company, a Corporation
Location of Principal Place of Business, Downey, Idaho

There is delinquent upon the following described stock on account of assessments levied on the 7th day of March,

[fol. 347] 1922, the several amounts set opposite the respective names.

Name	Cont. No.	Shares	Amt.
Robert L. Hardwick	23	40	$40 00
Hyrum Jensen	8	40	40 00
L. W. Woodin	98	40	40 00
O. W. Bishop	109	52 68	52 68
David Christensen	78	40	40 00
C. D. McCormick	181	40	40 00
Emma Beckley	101	40	40 00
Emil Olson	28	40	40 00
S. O. Hamilton	62	80	80 00
W. J. Bybee	A 24	40	40 00
M. V. Burton	A 26	1	1 00
Gottfried Butler	A 30	20	20 00
J. H. Hartvigsen	73	40	40 00
Harriott Riddle	1	80	80 00
Charles Sheppard	122	42 12	42 12
Joseph Murphy	13	80	80 00
Joseph Murphy	10	80	80 00
Thomas R. Bennett	71	80	80 00
John Dahlke	153	40	40 00
Charles W. Woosley	159	40	40 00
Dan Ware	51	80	80 00
Jesse Richards	106	40	40 00
Jesse Richards	½ of 18	40	40 00
Jesse Richards	26	80	80 00
Jesse Richards	107	40	40 00
J. L. Hartvigsen	113	40	40 00
Jesse Richards	204	5	5 00
J. L. Hartvigsen	44	40	40 00
Jesse Richards	205	5	5 00
J. L. Hartvigsen	A 5	1	5 00
Willard Kingsford	A 2	40	40 00
George T. Hyde	A 5	60	60 00
George T. Hyde	A 19	76 20	76 20
J. S. Hyde	15	40	40 00
W. B. Coffin	A 31	40	40 00
[fol. 348] J. A. Stone	A 31	10	10 00
T. W. Bennett	110	40	40 00
J. J. and Carl Richards	56	80	80 00

Name	Cont. No	Shares	Amt
George D. Maughan	half of A 7	40	40 00
John Newbold	half of A 7	40	40 00
Peter W. Olson	92	80	80 00
Mrs. R. E. Bennett	136	40	40 00
D. C. Olmstead	75	52 80	52 80
E. E. Gilbert	94	5	5 00
Neils O. Pehrson	10	40	40 00
C. K. Hensman	59	23 35	23 35
Dan Ware	112	40	40 00
Otto C. Beckman	9	80	80 00
C. J. Coffin	74	40	40 00
E. Dolder	A 29	20	20 00
Guy E. Tripp	90	40	40 00
Jesse Richards	25	80	80 00
Sophia C. Roberts	65	40	40 00
Andrew Newbold	A 38	40	40 00
W. T. Morley	A 6	40	40 00
C. Leader	2	80	80 00
C. A. Royter	82	80	80 00
Christian Peterson	half of 87	40	40 00
John S. Hyde	A 36	2	2 00
James Frazer	48	80	80 00
Lucian C. Farr	178	5	5 00
L. W. Farr	183	15	15 00
Lucian C. Farr	182	21	21 00
Lucian C. Farr	179	27 56	27 56
M. V. Burton	A 41	40	40 00
W. I. Anderson	161	40	40 00
Ida Pauline Reisner	A 39	65	65 00
Joseph A. Brimm	?	10	10 00
Harold Tripp	187	15	15 00
Edward Denney	A 48	52 32	52 32
Guy E. Tripp	190	10	10 00
[fol. 349] E. E. Gilbert	173	23	23 00
L. H. McCormick	193	15	15 00
Peter W. Olson	A 47	31 60	31 60
John Layton	?H	40	40 00
J. L. Hartvigsen	A 33	1	1 00
A. C. Hancock	?	40	40 00

And in accordance with law so many shares of each parcel of such stock as may be necessary will be sold at Downey, Idaho, on the 24th day of April, 1922, at 2 o'clock P. M. of such date, in front of the Post Office, Downey, Idaho, to pay delinquent assessment thereon, together with costs of advertising and expense of sale.

J. W. Christensen, Secretary, with location of office at Downey, Idaho.

DEFENDANT'S EXHIBIT No. 14

Minutes of the Board of Directors of the Portneuf-Marsh Valley Canal Company

Held March 7th, 1922, in the Stake Office. All the members of the Board of Directors present with the exception of Secretary J. W. Christensen who was not able to be there on account of being ill. President E. W. Olson acting as chairman.

Question of levying an assessment on the shares of stock being before the Board, the following motion was offered by Moses Christensen and seconded by C. Leader, to-wit:

It is hereby ordered that an assessment of $1.00 per share be and the same is hereby levied on all of the capital stock [fol. 350] of the Portneuf Marsh Valley Canal Co. for the purpose of maintaining and operating the canal system of said company and works thereof, and conducting the business thereof and meeting the obligations thereof. That the said assessment be payable to J. W. Christensen, Secretary of said Company, at his office in Downey, Idaho, on the 20th day of March, 1922, and all assessments thereon, which are unpaid on the 10th day of April, 1922, shall be delinquent and thereafter sold as delinquent on the 24th day of April, 1922, in accordance with the provisions of the Statute of the State of Idaho.

The above motion carried unanimously.

Defendants' Exhibit No. 15

Minutes of the Board of Directors of the Portneuf-Marsh Valley Canal Company

Held in the Stake office September 5th, 1922, there were present President E. W. Olson, C. Leader, Moses Christiansen, S. L. Johnson and J. W. Christensen.

Question of levying an assessment on the shares of stock being before the Board the following motion was offered by C. Leader and seconded by S. F. Johnson, to-wit:

It is hereby ordered that an assessment of $1.00 per share be and the same is hereby levied on all of the capital stock of the Portneuf-Marsh Valley Canal Company for the purpose of maintaining and operating the canal system of said Company and works thereof, and conducting the business thereof and meeting the obligations thereof. That the said [fol. 351] assessment be payable to J. W. Christensen, Secretary of company, at his office in Downey, Idaho, on the 20th day of September, 1922, and all assessments thereon, which are unpaid on the 5th day of October, 1922, shall be delinquent and thereafter sold as delinquent on the 24th day of October, 1922, in accordance with the provisions of the Statute of the State of Idaho.

The above motion carried.

Notice of Assessment

Portneuf-Marsh Valley Canal Company—Principal Place of Business, Downey, Idaho

At a meeting of the Board of Directors of the Portneuf-Marsh Valley Canal Company, held in the office of the Portneuf Stake at Downey, Sept. 5, 1922, question of levying an assessment on the shares of the stock of the Company being before the Board, the following motion was offered by C. Leader and seconded by S. F. Johnson, to-wit:

It is hereby ordered that an assessment of $1.00 per share be and the same is hereby levied on all of the capital stock of the Portneuf-Marsh Valley Canal Company, for the purpose of maintaining and operating the canal system of said Company and works thereof, and conducting the business

thereof and meeting the obligations thereof. That the said assessment be payable to J. W. Christensen, Secretary of the said Company, at his office in Downey, Idaho, on the 20th day of Sept., 1922, and all assessments thereon, which [fol. 352] are unpaid on the 5th day of October, 1922, shall be delinquent and thereafter sold as delinquent on the 24th day of October, 1922 in accordance with the provisions of the Statutes of the State of Idaho. The motion passed unanimously.

J. W. Christensen, Sec. and Treas.

Sept. 15-29.

Affidavit of Publication

State of Idaho,
County of Bannock, ss:

I, Frank B. Porter, being duly sworn, depose and say that I am the publisher of the Downey Idahoan, a weekly newspaper published at Downey, Idaho, Bannock County, in the State of Idaho. That the Assmt. Notice, a true copy of which is hereto attached, was published in the Downey Idahoan for three consecutive issues first publication having been made on the 15 day of Sept., 1922 and the last publication having been made on the 29 day of Sept., 1922.

That said paper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive weeks prior to the first publication of said notice or advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

Frank B. Porter.

Subscribed and sworn to before me this 10-11-23. Fred Waite, Notary Public. My commission expires September 1, 1924. (Seal.)

[fol. 353] Portneuf Marsh Valley Canal Company, a Corporation—Location of Principal Place of Business, Downey, Idaho

There is delinquent upon the account of assessments levied on following described stock on the 5th day of September, 1922, the several amounts set opposite the respective names:

Name	Cont. No.	Shares	Amt.
Geo. D. Maughan	½ of A 70	40	$40 00
John Newbold			
Peter W. Olson	92	80	80 00
Peter W. Olson	93	80	80 00
John Ware	12	80	80 00
Leroy Sheppard	A 4	60	60 00
Mariam Aller	20 A of A 4	20	20 00
R. E. Bennett	136	40	40 00
E. H. Welling	7	80	80 00
John Bassil	19	80	80 00
Robert L. Hardwick	23	40	40 00
D. C. Olmstead	75	52 80	52 80
E. G. Gilbert	94	5	5 00
Niels O. Pehrson	100	40	40 00
C. K. Hensman	59	23 35	23 35
Dan Ware	112	40	40 00
Otto C. Blackman	9	80	80 00
H. A. Peterson Co.	85	40	40 00
C. J. Coffin	74	40	40 00
G. A. Sievers	125	52 60	52 60
E. Dolder	A 29	20	20 00
Charles Webber 6	60	40	40 00
M. A. Thomas	A 35	2	20 00
J. C. Tewell	79	52 80	52 80
Guy E. Tripp	90	40	40 00
Jesse S. Richards	25	80	80 00
Sophia C. Roberts	65	40	40 00
S. O. Hamilton	69½	40	40 00
[fol. 354] Andrew J. Newbold	A 38	40	40 00
T. D. Wallace	9	5	5 00
C. Leader	2	80	80 00
C. A. Royter	82	80	80 00
Christian Peterson	½ 87	40	40 00
R. H. Christensen	174	40	40 00
M. L. Johnson	A 17	42 60	42 60
Jos. Simpson	103	40	40 00
John S. Hyde	A 36	2	2 00
James Fraser	48	80	80 00
Lucian C. Farr	178	5	5 00
A. W. Farr	183	15	15 00
Lucian C. Farr	182	21	21 00

Name	Cont. No.	Shares	Amt.
Lucian C. Farr	179	27 56	27 56
Robert Dill	111	80	80 00
T. D. Wallace	3	80	80 00
David Christensen	78	40	40 00
C. D. McCormick	181	40	40 00
Emma Beckley	101	40	40 00
E. L. Matoon	171	53 34	53 34
P. W. Olson	163	40	40 00
Emil Olson	28	40	40 00
J. W. Pehrson	72	40	40 00
S. O. Hamilton	62	80	80 00
W. J. Bybee	A-24	40	40 00
M. V. Burton	A-26	1	1 00
Fred Pack	A-30	20	20 00
J. H. Hartvigsen Estate	73		
H. W. Wistner	64	52 74	52 74
Jos. Murphy	13	80	80 00
Jos. Murphy	10	80	80 00
Thos. R. Bennett	71	80	80 00
L. I. Layton	36	80	80 00
Arley Dewey	50	40	40 00
John Dahlke	153	40	40 00
Chas. W. Woody	159	40	40 00
First Natl. Bank, Pocatello	A-14	40	40 00
[fol. 355] Dan Ware	51	80	80 00
Geo. McAlpine	68	80	80 00
Jesse S. Richards	106	40	40 00
Jesse S. Richards	118	40	40 00
Jesse S. Richards	102	40	40 00
Jesse S. Richards	26	80	80 00
Jesse S. Richards	107	40	40 00
J. L. Hartvigsen	113	40	40 00
Jesse S. Richards	204	5	5 00
J. L. Hartvigsen	44	40	40 00
Jesse S. Richards	205	5	5 00
L. N. Nelson	(?)	80	80 00
J. L. Hartvigsen	A-3	1	1 00
Willard Kingsford	A-2	41	41 00
Geo. T. Hyde	A-5	60	60 00
Geo. T. Hyde	A-19	76 20	76 20
S. E. Johnson	5	40	40 00

Name	Cont. No.	Shares	Amt.
J. S. Hyde	15	40	40 00
Jos. A. Stone	A 31	10	10 00
W. B. Coffin	A 31	40	40 00
T. W. Bennett	110	40	40 00
J. J. and Carl Richards	56	80	80 00
Thompson	A 10	80	80 00
Thompson	57	80	80 00
M. V. Burton	A 41	40	40 00
S. O. Hamilton	124	105	105 00
W. I. Anderson	169	79 76	79 76
John Anderson	140	40	40 00
J. Lee Peterson	96	40	40 00
J. Lee Peterson	96½	40	40 00
Ida Pauline Reisner	A 39	65	65 00
Robert Dill	137	53 40	53 40
Harold Tripp	15 of 187	15	15 00
Edward Denney	A 48	52 32	52 32
Guy E. Tripp	10 of 190	10	10 00
E. F. Gilbert	173	23	23 00
Heber F. Johnson	191	10	10 00
Heber F. Johnson	24	20	20 00
[fol. 356] S. F. Johnson	A 42	1	1 00
C. D. McCormick	15 of 192	15	15 00
L. H. McCormick	15 of 193	15	15 00
Arley Dewey	5 of 194	5	5 00
Arley Dewey	10 of 195	10	10 00
Peter W. Olson	A 47	3	3 00
Erik Olson	A 47	31 60	31 60
L. H. McCormick	198	10	10 00
John Layton	?H	40	40 00
John E. Criddle	A 12	2 85	2 85
Lorin Criddle	P 13	9 85	9 85
Paul Garvin	199	10	10 00
John & Lorrin Criddle	(?)	25	25 00
Morris Simpson	(?)	65	65 00
Jane Brown	200	40	40 00
Jesse S. Richards	½ of 18	40	40 00
J. L. Hartvigsen	½ of 66	40	40 00
A. C. Hancock	(?)	40	40 00
Will Underwood	10	10	10 00

And in acordance with law, so many shares of each parcel of such stock as may be necessary will be sold at Downey, Idaho, on the 24th day of Oct., 1922 at 2 o'clock p. m. of such date, in front of the Post Office, Downey, Idaho, to pay delinquent assessment thereon, together with the costs of advertising and expense of sale.

J. W. Christensen, Secretary, with location of office at Downey, Idaho.

[fol. 357] Affidavit of Publication.

State of Idaho,
County of Bannock, ss:

I, Frank B. Porter being duly sworn, depose and say that I am the publisher of The Downey Idahoan, a weekly news paper published at Downey, Idaho, Bannock County, in the State of Idaho. That the Delinquent Notice, a true copy of which is hereto attached, was published in The Downey Idahoan for two consecutive issues first publication having been made on the 28 day of Sept., 1922 and the last publication having been made on the 5 day of Oct., 1922.

That said paper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive wee' s prior to the first publication of said notice or advertisement, and is a newspaper within the meaning of the laws of the State of Idaho.

Frank B. Porter.

Subscribed and sworn to before me this 10-11-23. Fred Waite, Notary Public. My commission expires September 1, 1924. (Seal.)

Defendants' Exhibit No. 16

Name	Cont.	Sold
Jos. S. Morrison	168	
John H. Moys	104	
R. H. McDough	177	
T. C. Lawler	52	
[fol. 358] Dwane E. Kent	35	
L. W. Johnson	A-21	
E. E. Gillespie	118	

Name	Cont.	Sold	
1913			
O. M. Ingdahl	141		
Anton K. Dahlen	32		
Chester O. Christensen	A 21		
H. E. Connie	162		
Thomas Coffin	146		
Frank W. Blue	176		
J. W. Aldridge	69		
Herman Anderson	169		
1914			
E. E. Gillespie	55		
C. H. Overton	67		
Geo. A. Nixon	123		
1915			
F. C. Knight	41	May	25th
J. H. Byington	A 27	May	25th
L. W. Johnson	116	May	25th
John Clegg	P 2	May	25th
1916			
Finley P. Sleeper	158	May	25th
Berry A. C. Norstrom	164	May	25th
H. A. Weddle	198	May	25th
W. P. Hanover	A 9	May	25th
Leo V. Johnson	P 14	May	25th
1917			
Fred Muller	A 12	May	25th
H. C. Taylor	45	May	25th
D. W. Connie	165	Dec.	8th
John E. Widmann	89	Dec.	8th
John E. Widmann	77	Dec.	8th
Robert S. Nelson	31	Dec.	8th
Wm. Aston	152	Dec.	8th
[fol. 359] A. F. Daughenbaugh	120	Dec.	8th
John E. Widmann	95	May	25th
E. E. White	115	May	25th
W. K. Walton	20	May	25th
H. V. Monell	119	May	25th

1917

Name	Cont.	Sold
A. H. Moxham	127	May 25th
J. C. Cathcart	37	May 25th
Oliver Chambers	83	Dec. 8th
T. M. Edwards	A-1	Dec. 8th
Everett Chambers	84	Dec. 8th
H. V. Monell	119	Dec. 8th
Oliver Chambers	58	May 25th
A. B. Perkins	P-3	May 25th
Bird Clegg	P-5	May 25th
Martha Wise	P-6	May 25th
R. H. Palmer	P-7	May 25th
R. H. Palmer	P-4	May 25th
R. H. Palmer	P-8	May 25th
D. W. Evans	P-1	May 25th
Charles R. John	62	Dec. 8th

1918

Lottie L. Cobb	128
D. C. Cathcart	17
J. C. Mock	145
Mary Ethel Mock	21
E. E. White	121
R. L. Van Eaton	40Y
Oliver Hanchett	130
F. D. Cathcart	39
D. W. Evans	22
L. A. Trowbridge	129
Ferris & Pinkney	11
Wm. Thomas	P 12

1919

A. F. Daughenbaugh	54	May 24th
D. R. Taylor	135	May 24th
[fol. 360] F. C. Knight	4	May 24th
Antownet Treganza	38	May 24th
C. E. Layton	33	Nov. 25th
Fred Benninger	134	May 24th
M. W. Aldridge	3	May 24th
Geo. W. Hobbs	180	May 24th
Fred Benninger	144	May 24th
W. H. Chester	160	Nov. 25th

1920

Elizabeth Barhoe	155	Dec.	8th
O. A. Smith	11	Oct.	18th
C. N. Ray	34	Oct.	18th
A. F. Daughenbaugh	16	May	24th
W. H. Chester	91	Oct.	18th
Vinnie R. Walling	42	Oct.	18th
H. M. Tibbitts	24	Oct.	18th
H. M. Tibbitts	14	Oct.	18th
Charles Renolds	119	May	24th
S. D. Staves	114	May	24th
Elmer T. Richards	114	May	24th
J. J. Barnes	118	Oct.	18th

1921

Emma Beckley	101	May	21st
Otto Roundy	85	Nov.	7th
Marry Zoerb	80	Nov.	7th
Bert Chaney	175	Nov.	7th
H. M. Tibbitts	P 10	Nov.	7th

1922

Sophia C. Roberts	65	Oct.	24th

Defendants' Exhibit No. 17

Contract

This agreement, made and entered into in duplicate this [fol. 361] 3rd day of June, 1908, by and between the State of Idaho, the party of the first part, through the State Board of Land Commissioners of said state, said Board consisting of Frank R. Gooding, Governor, Robert Lansdon, Secretary of State, J. J. Guheen, Attorney General, and S. Belle Chamberlain, Superintendent of Public Instruction of said State and H. O. Harkness, T. M. Edwards, J. H. Byington, L. W. Johnson, E. C. Crocker, and Geo. T. Hyde, co partners doing business under the firm name of Portneuf-Marsh Valley Irrigation Company, parties of the second part, Witnesseth: that,

Whereas, the said Portneuf Marsh Valley Irrigation Company, did heretofore, to wit, on the 18th day of December, 1907, file with the said Board of Land Commissioners of the State of Idaho, a proposal for the construction of certain irrigation works, situated in the County of Bannock in said State of Idaho, under the provisions of Section 4, of the act of Congress, approved August 18, 1894, commonly known as the "Carey Act", and the acts amendatory thereof and the laws enacted by the State of Idaho in pursuance of the power granted by the acts of Congress, and

Whereas, at the request of the State of Idaho; the lands lying under the said irrigation works have been by contract between the United States and the State of Idaho, bearing date the 14th day of May 1908, set apart by the United States, in compliance with the provisions of said acts of Congress, the said lands being designated as List No. 19, of the State of Idaho, copies of the said list being filed in the United States Land Office, at Blackfoot, Idaho, and the said lands so set apart and included in said list No. 19, being [fol. 362] particularly and fully set out in the said contract between the United States and the State of Idaho, to which reference is hereby had for a full and complete description of said lands, and

Whereas, the said Board of Land Commissioners on the 3rd day of June, 1908, resolved to enter into a contract with the said parties of the second part upon the terms and conditions hereinafter set forth.

Now, therefore, in consideration of the promises and covenants, and agreements hereinafter mentioned and to be kept and performed by the respective parties hereto, it is mutually covenanted and agreed as follows:

I

Purposes of Contract

The said party of the second part agrees to construct and build the said irrigation works mentioned in said proposal and hereinafter referred to and more particularly described, and to provide for the sale of shares of water rights in said irrigation works from time to time, as and in the manner hereinafter provided, to persons filing upon portions of the lands hereinbefore described and referred

to, and to the purchasers and owners of school and other State lands and to the owners of other lands situated under said irrigation works, or any extension thereof and which are susceptible of irrigation therefrom; such shares or water rights to be sold on the terms hereinafter specified, and also to finally provide the manner of transferring the ownership, management and control of said works to the purchasers of said shares or water rights as hereinafter provided.

[fol. 363] 2

It is mutually covenanted and agreed as follows:

1st. That for and in consideration of the covenants of said party of the first part herein contained, the party of the second part agrees to construct a reservoir, canals and irrigation system. Beginning at a point on the Topons Creek approximately 1,148 feet from the southwest corner section 26, bearing North 30 degrees 20 minutes west at which point head gates will be installed, built of iron and wood with concrete frame and sluice way, canal starting at this point will run in a general easterly direction, the alignment being more completely set out in plans on file in the State Engineer's office all of which are made a part of this contract. Said canal to be built of earth bank, crown of bank four feet (4), canal to bank, crown of bank four feet (4), canal to carry 250 second feet of water; length of canal approximately six miles. Will empty its waters into a reservoir, which the party of the second part will build at Chesterfield, plans for which are on file in the State Engineer's office and are made a part of this contract.

Reservoir will be made by erecting a dam (1,500) Fifteen hundred feet long, Fifty (50) feet high at the highest point, dam to be made of puddled earth with a concrete core extending along the base said core to be built in a trench extending eight (8) feet above the natural level of the ground.

The dam will have a slope of three to one (3 to 1), on the inside, and two to one (2 to 1) on the outside. The reservoir thus made will empound 27,250 acre feet, and will have an outlet at the base of dam through gates built of wood [fol. 364] and iron and fitted into concrete frame and sluice way.

There will be a spill way through rock formation at the east end of the dam. The water will be taken from this reservoir and carried in the natural channel of the Portneuf River to a point in said Portneuf River, North Forty-five (45) degrees twenty four (24) minutes east, 3,529.4 feet from the southwest corner of Section 22, Township 9 S., R. 37 E. B. M., at which point the waters will be taken out through head gates built of wood and iron set in concrete frames and through a canal approximately 84,780 feet long. The alignment of said canal being more particularly set in plans on file with the State Engineer, and State Land Board, they being made a part of these specifications.

This canal will run in a southwesterly direction through Township 9-10 and 11, S. R. 37 E. B. M. Approximately 65,380 feet, to a point where the first lateral will be taken off to carry the waters on to the land to be irrigated. The main canal will carry 250 second feet of water to this point and is to be built of earth, rock and concrete. Will have Sixteen (16) feet width on the bottom, slope two to one, six (6) feet to top of bank, crown of bank four (4) feet. The canal from this point will extend approximately 19,500 feet, in a southerly direction; will have twelve feet at bottom, slope two to one (2 to 1) four and one-half ($4\frac{1}{2}$) feet to top of bank, crown of bank three (3) feet. From this point to the terminus which is practically 15,840 feet, nine (9) feet at bottom, four (4) feet at top of bank, slope two to one (2 to 1), crown of bank there will be five laterals [fol. 365] in all, and it will be taken from the main canal approximately one mile apart, and will run in a westerly direction, carrying the waters over the lands to be irrigated. These laterals will be made of earth taking their water through gates made of wood set in concrete frames and sluice ways and will have sufficient capacity to carry Fifty (50) second feet of water in each canal.

This canal system to be surveyed and lateral to be definitely determined by topographical survey which is to be made and platted so that a contour shall be definitely shown.

The size of the laterals shall be determined from the lay of the ground, the amount of the land governing the size of the lateral in each district by projecting lines on the plat and laying out on the ground in conformity with

the plat. This plat and system of laterals to be submitted to the State Engineer for approval from time to time as the surveys are made.

Coulees and draws are to be utilized as water ways when convenient. Openings in the canal are to be made in concrete.

Changes in these plans and specifications may be made with the consent of the State Engineer, and the approval of the State Land Board.

Detailed plans of all structures and dams, will be furnished to State Engineer for his approvai before work of construction on same begins.

[fol. 366] 3

Right of Way

The said party of the first part grants to the said party of the second part, a right of way across all lands belonging to the State of Idaho, or that may be ceded to the State of Idaho, by virtue of the act of Congress commonly known as the "Carey Act," or by any other laws for the construction and operation of said reservoir and irrigation system, which right of way shall be equal width of the canal, lateral or waste ditch at its base, from toe to toe of the embankment together with a strip of land along one side of said canal, lateral or waste ditch and adjacent thereto, not to exceed (50 fifty feet in width along the main canal, and thirty (30) feet in width along the laterals leading from said main ditch, and a proportionate width along the smaller laterals and waste ditches; said right of way to be located as designated by the Chief Engineer of the party of the second part and approved by the State Engineer, and in all cases to be sufficient for ingress along said canal, lateral or waste ditch, in proportion as necessity therefore exists, and all water users on land irrigated from said irrigation system shall have such right of way as may be necessary from the second party's canal or laterals to their own land in order to construct and maintain the necessary service ditches for their own use, and such right of way across said lands as may be necessary for waste ditches. No more laterals, service or waste ditches shall be constructed across any premises than are

necessary in the opinion of the Chief Engineer of the Company and the State Engineer to properly irrigate the lands so intended to be irrigated from such ditches and to [fol. 367] carry away the waste water therefrom.

The laterals, service and waste ditches shall be constructed under the direction of the Chief Engineer of the Company and subject to his approval and the approval of the State Engineer. In case any land owner is dissatisfied with the location of any service ditch across his premises he shall have the right to appeal to the State Board of Land Commissioners, whose decision shall be final. Detail maps showing the locations of laterals and waste ditches constructed by the second party shall be filed with the Board and the State Engineer, but such filing need not be made prior to the lands being thrown open for settlement.

4

Appropriation of Water

It is understood that the said parties of the second part are the owners of the right to divert the water from the Portneuf River, under the following appropriations made on the 18th day of December, 1907, by the Portneuf-Marsh Valley Irrigation Company, for the diversion of (244.4 cu. ft.) Two hundred forty-four and four tenths cubic feet per second of time to be used for domestic, irrigation and power purposes as set out and described in permit number 33373, issued by the State Engineer of the State of Idaho, on December 18th, 1907.

And the said party of the second part hereto agrees to cause to be furnished and delivered to the said canal out of the said appropriations an amount equal when measured at the points herein provided the one-eightieth of a cubic foot (1/80) of water per second of time for each and every [fol. 368] acre of land described in said contract between the United States and the State of Idaho, generally known as the "Carey Act," lands, and hereinafter referred to as such and for the irrigation of the lands belonging to the State of Idaho, and lying under said irrigation works and susceptible of irrigation therefrom and for the irrigation of all other lands lying under and susceptible to irrigation

from said canal and irrigation works. Said water to be delivered and measured within one-half mile of the quarter section in which the land so irrigated or susceptible of irrigation therefrom is situated.

5

Entry of Lands

Upon the execution of this contract and when the said canal shall be so far completed as to secure the delivery of water for irrigation and reclamation of said lands, the State Board of Land Commissioners of the first part shall cause to be opened for settlement as provided by law, the lands described in said contract between the United States and the State of Idaho and known as the "Carey Act Lands," provided, however, that second party nor any of its officers or employees shall not be permitted to file on said lands under such canal as the agent or attorney in fact for any other person; and second party hereby warrants the title to said canal and irrigation system and to the water rights above mentioned, and agrees to defend such title at its own cost and expense in the event of any litigation concerning the same, before such canal and irrigation system is finally transferred and turned over to the corporation to be formed as hereinafter set forth.

[fol. 369]

6

Application for Lands

The said party of the first part through its State Board of Land Commissioners, agrees that it will not approve any application for, or filing on, said "Carey Act" lands, until the persons or person applying shall furnish to the said Board a true copy of the contract entered into with the said party of the second part for the purchase of sufficient shares or water rights in said irrigation works, or shares of stock in the corporation to be formed hereinafter provided for the irrigation of the lands applied for, it being understood that such applicant shall have acquired a right to at least one-eightieth (1/80) of a cubic foot of water per second of time for each acre filed on. And the said

party of the second part hereby stipulates and agrees that to the extent of the capacity of the said irrigation works, after such lands are open for entry and settlement, it will sell or contract to sell water rights or shares of "Carey Act" lands so to be filed upon, to be qualified entrymen thereof, and to the purchasers of land belonging to the State of Idaho and embraced within this contract, without preference or partiality other than that based upon priority or application.

7

Sale of Lands by the State

That the said party of the first part, acting through its State Board of Land Commissioners, agrees to sell the Carey Act lands, herein mentioned to such persons as are or will be by law entitled to file upon the same, for the sum of (50) cents per acre, one-half of which shall be paid [fol. 370] at the time of application for the entry of such lands made to the said Board, and the remaining one-half paid at the time of making final proof thereon.

8

Price of Water Rights

Said party of the second part further agrees and undertake that they will sell or cause to be sold to the person or persons filing upon any of the lands herein described, or to the owners of other lands not described herein but which are or may be susceptible for irrigation from their canal system by good and sufficient contract of sale with right of possessions and enjoyment by the purchaser pending its fulfillment, a water right or share in said canal for each and every acre filed upon or purchased from the State or acquired from the United States, or held in private ownership. Each of said shares or water rights shall represent a carrying capacity in said canal sufficient to deliver water at the rate of one-eightieth (1/80) of one second feet per acre, and each share or water right sold or contracted as herein provided, shall also represent a proportionate interest in said irrigation works together with all

rights and franchises therein, based upon the number of shares finally sold in said irrigation works. Said irrigation system, however to be built in accordance with the plans heretofore filed with the Board, which irrigation system, according to said plans has been determined by the State Engineer, to have a carrying capacity hereinbefore mentioned.

Such water rights or shares shall be sold to the persons [fol. 371] or person aforesaid for lands included in said segregation under the provisions of the "Carey Act" and for lands adjacent thereto or that can or may be irrigated from said irrigation system when completed, all at a price not to exceed $35.00 per share, except as is hereinafter provided, the same to be paid for as follows:

In cash at time of sale ($3.00) Three Dollars per share and the remainder in nine equal annual instalments, each bearing the interest at the rate of six per cent (6%) per annum, interest payable annually.

To the person or persons purchasing any portion or portions of section sixteen (16) or thirty-six (36) which has been granted to the State of Idaho for common School purposes or any other land belonging to the State of Idaho and within said segregation, and which are susceptible of irrigation and reclamation from said irrigation system, water rights or shares shall be sold at a price not to exceed Twenty-five ($25.00) per share, provided said water rights or shares are purchased within one year after the purchase of the lands from the State, and not exceeding thirty-five ($35.00) dollars per share at any time thereafter. Said payments upon said State lands to be made as follows:

When the price is twenty-five ($25.00) dollars per acre, in cash at time of sale, two and one-half ($2.50) dollars per acre, and the remainder in nine (9) annual installments of two and one-half ($2.50) dollars per acre, each bearing interest at the rate of six per cent (6%) per annum, interest payable annually. When the price is thirty-five ($35.00) dollars per acre, such payments shall be made as follows: [fol. 372] in cash at the time of sale three ($3.00) dollars per acre, and the remainder in nine equal installments each bearing interest at the rate of six (6%) per cent per annum, interest payable annually.

In case the purchaser or entryman on lands other than those segregated under the "Carey Act," except school lands, decline to purchase water rights for two years or more after the water is ready for delivery, then two ($2.00) dollars may be added to the price of the water for each years' delay or fraction thereof. It is further agreed that no payment other than the initial payment, and no interest shall be required under any contract either for Carey Act lands, or State or private lands, until the water for the said land is available from said canals for distribution at a point within one-half mile of each legal subdivision of one hundred and sixty (160) acres of the said land, and until the full completion of the reservoir system set out in the specifications above and such water must be available at the beginning of the irrigation season in order to make such payments become due, and all payments and interest provided in said contract shall be advanced in time according to the delay in the delivery of said water as aforesaid.

It is understood and agreed that the said party of the second part shall charge interest at the rate of six per cent (6%) per annum upon all deferred payments whenever said shares are sold upon a time contract.

This agreement shall not, however, be construed to prevent the sale of shares of or water rights to the purchasers upon terms more favorable than those hereinbefore pro-
[fol. 373] vided, or to prevent the payment of installments of the purchase price in advance of the maturity of the same at the option of the purchaser. But in no case shall water rights or shares be dedicated to any of the lands aforementioned or sold beyond the carrying capacity of the said canal system or in excess of the appropriation of water as hereinbefore mentioned.

9

Transfer of Possession and Management of Canal

It being necessary to provide a convenient method of transferring the ownership and control of said canal and irrigation works from the said party of the second part herein to the purchasers of said water rights in said canal and for determining their rights among themselves and between said purchasers and the party of the second part

herein and for the purpose of operation and maintaining said canal during the period of construction and afterwards and for the purpose of levying and collecting tolls, charges and assessments for managing said canal and for the management and operation thereof it is hereby provided that as soon as said lands are ordered thrown open for settlement, a corporation to be known as the Portneuf-Marsh Valley Company, Limited, shall be formed at the expense of the party of the second part, the Articles of Incorporation of said company, to be approved by the Attorney of the State of Idaho; that the authorized capital of said corporation shall be twenty thousand (20,000) shares, which amount is intended to represent one share for each acre of land which may hereafter be irrigated from said canal. All persons, who prior to the formation of such cor- [fol. 374] poration, have purchased or acquired water rights of water from said second party for the irrigation of lands embraced in this contract and being then the owners of such rights or shares, shall be entitled to receive and have issued to them, shares in such corporation so to be formed, equal in number to the water rights or shares or water then owned and held by such persons, and the remainder of the capital stock of such corporation shall be issued to the party of the second part in consideration of the covenants and agreements herein contained in order to enable it to deliver to purchasers of water rights the shares of stock representing the same. Said shares of stock, however, shall have no voting and shall be without force or effect until they have been sold or contracted to be sold to the purchasers of land under said irrigation works.

At the time of the purchase of any water right after the formation of said corporation, there shall be issued to the purchaser thereof, one share of capital stock of said corporation for each acre of land entered or filed upon. That the said party of the second part herein shall, in case said water rights or shares of stock are not fully paid for, require the endorsement and delivery to it of said stock, and shall at the same time require of said purchaser an agreement that until thirty-five per cent (35%) of the purchase price of said stock has been paid, the said party of the second part therein shall vote said stock in such manner as it may deem proper at all meetings of the stockholders of said corporation.

But the said second party hereto, nor the said Portneuf-[fol. 375] Marsh Valley Canal Company, Limited, cannot in any manner control any of the said system so as to limit the liability of the second party under the terms of this contract.

The said Portneuf-Marsh Valley Canal Company, Limited, shall have the management, ownership and control, as above set out, of the said irrigation system as fast as the same is completed and turned over to it for operation by the said party of the second part, as hereinafter provided. Whenever it is certified by the Chief Engineer of the Company and the State Engineer of Idaho, that certain portions of the said irrigation works have been so far completed as to permit the operation thereof for delivery of water to purchasers of water rights, the same may, with the consent of the State Land Board, be transferred and turned over to the said Portneuf-Marsh Valley Canal Company, Limited, for operation. Such transfer and operation, however, shall not in any manner lessen the responsibility of the said second party with reference to the terms of this contract nor shall such consent upon the part of the State Land Board be construed as a final acceptance of such portion of such canal—it being always understood that the acceptance of said irrigation system must be in its entirety, and that the bond given for the faithful performance of said contract must be made and be liable for the substantial completion of the entire irrigation system.

X

Water Is Dedicated

The contract of sale of water right and the certificates of [fol. 376] shares of stock in the corporation to be formed as hereinbefore provided, shall each upon being issued to the purchaser or holder of land under the said irrigation works, be made to indicate and define in the contract or certificate, as the case may be, the amount of water, to-wit: one eightieth of a cubic foot per second of time, allotted to each acre represented thereby, and a carrying capacity in the canal sufficient therefore, such water to be delivered from the canal during each and every irrigation season, and to be measured at or within one-half mile of the quarter

section in which the land is situated, in such quantities and at such times as the conditions of the soil, crops and weather may determine, but according to such rules and regulations, based upon a system of distribution of water to the irrigators in turn and by rotation, as will best protect and serve the interests of all users of water from such canal system. It is agreed that such system of distribution by rotation shall be devised by said party of the second part and used, (if necessity arises) by the Portneuf-Marsh Valley Canal Company, Limited, during the period while it has the management of the said system; said system of rotation, however, to be approved by the State Engineer, and State Board of Land Commissioners.

The sale or contract of water rights to a purchaser shall be a dedication of the water to the land to which the same is to be applied, and the water right so dedicated shall be a part of and shall relate to the water right belonging to the said system of canal.

[fol. 377] 11

Measurement of Water and Charges for Delivery

The party of the second part agrees to construct the said irrigation system so that water conducted through its canals may be available at points not to exceed one-half mile, measured in a direct line, from each quarter section of land described in said segregations, and to be irrigated and reclaimed by water conducted through said canals. That it will construct and place in position, all headgates, flumes, weirs, and other devices for the control and measurement of water in the main canals and in the main laterals it being intended that the settler shall, under the direction of the Chief Engineer of the second party, build and furnish one gate or measuring device for his use on subordinate laterals but that all other gates, weirs, and measuring devices in the canals, main or subordinate laterals, shall be furnished and constructed by the second party. Plans for measuring devices, head gates and weirs are to be approved by the State Engineer.

No charge shall be made to the purchaser for the delivery of water for said lands, or lands adjacent thereto, prior to the first day of April, 1909, and then only in case the water

is available for the irrigation of the said land. For each succeeding year thereafter beginning with the first year when the water shall be available for delivery at the beginning of the irrigation season of said year, while the second party retains the control of the said Portneuf-Marsh Valley Canal Company, Limited, said Company may charge and assess the purchasers of water rights in said irrigation system not to exceed the sum of fifty (50) cents per acre [fol. 378] for each acre of land for which a water right has been purchased, the same to become due at the beginning of each irrigation season, if the water is ready for delivery at the beginning of such season, and such water must be available for use at a point within one-half mile of each quarter section of such land. If the sum so raised shall be insufficient for the purpose of maintaining, operating and keeping in repair the said system and paying the expenses for the management thereof, then the said party of the second part will furnish all the additional funds necessary to supply deficiency.

A main lateral, within the meaning of this contract, is a lateral taken from the main line of the canal. A subordinate lateral within the meaning of this contract, is a lateral built for the purpose of conducting water from a main lateral to a point within half a mile of the place of intended use. A coulee or draw used as a main lateral or a subordinate lateral shall also be included within these terms.

12

Increase of Capacity of Canal

The party of the second part shall be entitled at any time within five years from the date hereof, to increase the appropriation of water from the Portneuf River at the point of diversion herein described, and to increase the capacity of the said canal or any laterals thereof, and to use the same so enlarged or increased for the purpose of carrying any water belonging to the said party of the second part, under present appropriations or such additional appropriations; provided, however, that such use shall be [fol. 379] allowed only upon the making of such reasonable arrangements to the expenses of care and maintenance of the canal and irrigation system as may be agreed upon

between the parties of the second part and the said Board of Land Commissioners of the State of Idaho, or the said corporation to be formed as hereinafter provided. Any rights acquired by the party of the second part under the provisions of this section shall be at all times held used and employed subject and subordinate to the rights of the purchasers of shares of stock or water rights to the use of water for irrigation purposes, as provided in this contract; and there shall be conveyed and transferred to the said Portneuf-Marsh Valley Canal Company, Limited, out of the water appropriations of second party, so much of said appropriations as may be necessary to deliver to each and every purchaser of water rights or shares of stock in said Portneuf-Marsh Valley Canal Company, Limited, the amount of water required to be delivered under the several contracts of purchase made with second party, when measured at the points of measurements as hereinbefore fixed, and the balance of such appropriations is reserved to second party to be utilized or sold for power or other purposes.

13

Said parties of the second part agree to commence within 60 days from date hereof, and continue to prosecute the work on said irrigation system diligently and continuously to completion, unless temporarily interrupted by snow, rain or cold weather, and there shall be no cessation of wrok after the first year for more than sixty days, without the [fol. 380] consent of the Board and the irrigation works shall be entirely completed within five years from this date.

It is understood that changes and alterations in the plans and specifications heretofore prepared and filed may be made at any time with the consent of the State Board of Land Commissioners.

14

Mortgage

The right, title and interest of the second party in the said works and irrigation system and in the said lands may be mortgaged, as provided by the said Acts of Congress and the laws of the State of Idaho, hereinbefore referred to;

the form of such mortgage to be approved by the Attorney General of Idaho.

15

Forfeiture

It is agreed that the rights of the second party herein may be forefeited in accordance with the following provision of the laws of the State of Idaho, Act approved March 2, 1899, P. 287:

"Sec. 13. No contract shall be made by the Board which requires a greater time than five years for the construction of the works, and all contracts shall state that the work shall begin within six months from date of contract; that at least one-tenth on the construction work shall be completed within two years from the date of said contract; that construction shall be prosecuted diligently and continuously to completion, and that a cessation of work under [fol. 381] the contract with the State for a period of six months after the second year, without the sanction of the Board, will forfeit to the State all rights under said contract."

16

Estimated Cost

The estimated cost of the proposed irrigation works is Two hundred seventy-five thousand ($275,000) dollars, and the price at which water rights are fixed herein and for which liens are authorized against the separate legal subdivisions of land herein described, is deemed necessary in order to pay the costs and expenses of reclamation and interest thereon.

17

Existing Laws Part of Contract

It is hereby understood and expressly agreed that this contract is made and entered into by virtue of the provisions and subject to all of the conditions of an Act of Congress, commonly known as the "Carey Act," approved August 18, 1894, and the acts amendatory thereto and the laws of the State of Idaho, accepting the terms and provisions of the

said "Carey Act," and the contract between the United States, and the State of Idaho, segregating from the public domain the lands herein designated as Carey Act Lands, and that such laws and contract are as much a part of this contract as if specifically herein set forth.

[fol. 382] 18

Highways

Entries of land are understood to be made subject to a right-of-way, without compensation to the entrymen, for roads upon all exterior section lines and also upon all half section lines, which may be designated by the Board of County Commissioners, as may be provided by law; and such entries shall likewise be subject to such rights of way for such other roads, not exceeding fifty (50) feet in width, as second party may deem necessary, subject, however to the approval of the State Board of Land Commissioners.

19

Delivery of Water

It is agreed that the said Portneuf Marsh Valley Canal Company, Limited, shall not deliver water to or permit the use thereof from said irrigation system by persons who have not purchased water rights or who are not holders of stock in said Portneuf-Marsh Valley Canal Company, Limited, or who are not otherwise entitled thereto under this contract.

20

Water Supply for Cities and Towns

It is understood and agreed that so much water as may be necessary for the use of cities and towns, must necessarily take their water supply from said system of canals, shall be furnished from said canal system to said cities and towns, and the inhabitants thereof, upon such terms of sale or rental as may be agreed upon by the party of the second [fol. 383] part and said cities and towns, or the owners of the lands upon which the same are established, or the residents therein. Said cities and towns must contribute to

the maintenance and support of said irrigation system in proportion to the amount of water used by them and shares of stock of the Portneuf-Marsh Valley Irrigation Company, Limited, shall be issued for the amounts of water represented by said use to the trustees of any village or the mayor of any city, in trust, for the use and benefit of the town and cities and the inhabitants thereof.

XXI

Amendments

This contract may be amended and altered by second party with the consent of the first party, for the purpose of carrying out the objects of the contract, and for the purpose of carrying out the objects of the contract, and for the purpose of meeting any conditions now unforseen.

XXII

Bond

The said second party agrees to furnish a good and sufficient bond in the sum of $15,000.00 for the faithful performance of the within contract.

This agreement is executed in duplicate, one copy thereof to be filed with the party of the first part, and the other to be delivered to the parties of the second part.

In Testimony whereof the said party of the first part the State of Idaho has caused this agreement to be signed [fol. 384] by its Governor and President of the State Land Board Commissioners of the State of Idaho, and the said party of the second part has hereunto subscribed the names of the co-partnership by the signature of the members thereof, on the day and year above written for the State of Idaho, by

F. R. Gooding, Governor and President of the State Board of Land Commissioners. Attest: M. I. Church, Secretary. (Seal.) H. O. Harkness, T. M. Edwards, J. H. Byington, L. W. Johnson, E. C. Crocker, Geo. T. Hyde.

Defendants' Exhibit 18

Articles of Incorporation of the Portneuf-Marsh Valley Irrigation Company, Limited

Know all men by these presents, That we the undersigned H. O. Harkness, T. M. Edwards, J. H. Byington, L. W. Johnson, E. C. Crocker, G. T. Hyde, and D. W. Stanrod, all residents of the State of Idaho, have this day associated ourselves together for the purpose of forming a private corporation under the laws of the State of Idaho, and we hereby adopt the following Articles of Incorporation:

[fol. 385]

Article I

The name of this Corporation is, and shall be the Portneuf-Marsh Valley Irrigation Company, Limited.

Article II

The objects and purposes for which, and for any of which this corporation is formed are to do any or all of the things herein set forth to the same extent as natural persons might or could do, viz:

To irrigate lands.

To purchase, acquire, lease, construct, build, own, hold, operate, maintain, enlarge, improve, extend and sell, lease, mortgage, or otherwise dispose of, canals, ditches, flumes, dams, reservoirs and lakes, natural or artificial, and other works with all convenient appliances for the diversion, storage, distribution and supply of water for irrigation for agricultural purposes, and for mining, manufacturing, commercial or domestic purposes, together with all convenient laterals, ditches, conduits, flumes, or other means for the furnishing of a water supply for any purpose or purposes.

To purchase, lease, or otherwise acquire any interest in any dam or dams, whether heretofore or hereafter constructed, for the diversion, storage or distribution of water for irrigation or other lawful purpose or purposes, and to make or enter into any contract or contracts from time to time necessary or convenient for the maintenance, enlargement or operation thereof or any of the work appurtenant thereto.

To acquire by location, appropriation, license, or user, [fol. 386] under and by virtue of the Laws of the State of Idaho, or by purchase, lease, grant or otherwise, from any person or persons, corporation or corporations, partnership or partnerships, association or associations, water, water rights and water appropriations and rights to divert and use water, from any source whatever, and particularly from the Portneuf River in the State of Idaho, and to own, hold, possess, use, enjoy, lease, sell, dispose of and convey the same, or any interest therein, and to apply or cause or permit to be applied to any useful or beneficial or lawful purpose, all or any part of such waters.

To sell, grant or convey any waters owned, controlled or possessed by this Company or to be owned, controlled or possessed by this company, to contract for the use and enjoyment by any person or persons, corporation or corporations, partnership or partnerships, or other associations of any such waters for any lawful purpose or purposes, and to furnish and supply water for irrigation and for mining, manufacturing, commercial and domestic purposes or any of them, and to any municipal corporation or corporations, and to the residents or inhabitants thereof, for manufacturing commercial, domestic or municipal purposes, with the right to enter into any contract or contracts with any such municipality for any or all such purposes, and to accept, receive, purchase, lease or otherwise acquire and carry out and use all grants, right, privileges, easements or franchises for any such purpose or purposes, and to fix, charge, collect, receive, use and enjoy tolls, rentals, rates or other compensation for any such water so sold, furnished or distributed, or for any of the rights to enjoy the same which shall be granted or conferred by this company.

[fol. 387] To purchase, acquire, possess and use all or any part of the property, rights, privileges and franchises now or hereafter owned or held by the Portneuf-Marsh Valley Irrigation Company, a co-partnership, and to exercise and enjoy the same, and to acquire, purchase, enforce, exercise and enjoy all or any parts of the rights and privileges of said co-partnership that may now or hereafter exist by virtue of any contract or contracts now existing or hereafter to be made by said co-partnership, to the State of Idaho, and particularly all or any part of its rights and

privileges existing, or to exist by virtue of that certain contract dated June —, 1908, between said company, and said State of Idaho, or by virtue of any supplement thereto or amendment thereof, or by virtue of any other contract or contracts between said co-partnership and said State. And to undertake the performance or execution of any such contracts, or any part thereof.

To make and enter into any contract or contracts with the State of Idaho through its Board of Land Commissioners or otherwise, for the irrigation of any lands lying in said State, whether now or heretofore segregated from the public domain, or owned by the State of Idaho, or the Government of the United States, and for the enlargement, extension, completion or construction of any canal or canals, ditch or ditches, reservoir or reservoirs, lake or lakes, natural or artificial, and dams and other works designed for the purpose of irrigating any such land or lands.

To acquire by purchase, lease, location or otherwise from other persons or corporations, and from the State of Idaho, and from the Government of the United States, and to [fol. 388] maintain, extend, improve and enjoy any and all ways, rights of way, licenses, easements, privileges and franchises, and other properties and rights necessary or convenient for the building, construction, enlargement, extension or maintenance of, or for use in connection with, any and all dams, reservoirs, ditches, canals and system of canals and laterals, or any of them or part thereof, to be built, enlarged, owned or operated by this company, or of or for any bridge or other works to be owned or operated by this Company.

To acquire, purchase, lease, possess, maintain, enlarge and improve all necessary or convenient sites for reservoirs for the storage, diversion or distribution of water, together with all lands and rights or interests in lands that may be necessary or convenient for that purpose, and to acquire the same by purchase, lease, grant or otherwise from any private person or persons, corporation or corporations, partnership or associations, or from the State of Idaho, or from the Government of the United States.

To exercise from time to time and whenever and so often as it shall be thought necessary or convenient, the right of eminent domain for the purpose of appropriating

or acquiring any ways, rights of way, easements, privileges and franchises, or any water rights or water appropriations, or any real estate or rights or interest therein, which may be necessary or convenient in the carrying on or accomplishing of any of the foregoing objects or purposes.

To make and enter into any contract or contracts and accept the assignment and undertake the performance and [fol. 389] execution of any contract or contracts with the State of Idaho, for the construction of any irrigation system or works or any part thereof and the right from time to time to provide in such a manner as shall be thought convenient or desirable for the transfer of the ownership thereof to the purchasers of water rights or land under such canal system, and fully to carry out and perform all the provisions of any contract or contracts for any such purposes which shall be assigned to or made by this Company.

To assume and obligate itself to pay any stocks, bonds, coupons, promissory notes, mortgages, pledges, hypothecations, or evidences of debt, or any indebtedness, of any other company, corporation or individual; and to guarantee the payment or collection of any such bonds, coupons, promissory notes, mortgages, pledges, hypothecations or other evidences of debt, or any such indebtedness.

To do each and every act and thing whatsoever which may at any time be or become necessary, convenient or advisable for it to do in order to accomplish or carry out all or any of the objects or purposes or exercise all or any of the powers aforesaid.

Article III

The principal place of business of this corporation shall be, the town of Downey, County of Bannock, State of Idaho.

Article IV

The term for which this corporation shall exist, is Fifty (50) years from and after the incorporation.

[fol. 390]

Article V

The number of its directors who shall manage the affairs of this corporation shall be Seven (7); and they shall be termed the Directors, and the names and residences of

those who are appointed as directors to manage the same for the first year, or until the first annual meeting of the stockholders are as follows:

H. O. Harkness, McCammon, Idaho.
T. M. Edwards, McCammon, Idaho.
J. H. Byington, Downey, Idaho.
G. T. Hyde, Downey, Idaho.
E. C. Crocker, Downey, Idaho.
D. W. Stanrod, Pocatello, Idaho.
L. W. Johnson, Downey, Idaho.

Article VI

The Capital Stock of this corporation shall be Five hundred thousand ($500,000) dollars, divided into Five thousand (5,000) shares of the par value of one hundred ($100.) dollars per share.

The amount of capital stock fully paid and subscribed is as follows:

H. O. Harkness	1 Share
T. M. Edwards	1 Share
J. H. Byington	1 Share
G. T. Hyde	1 Share
E. C. Crocker	1 Share
D. W. Stanrod	1 Share
L. W. Johnson	1 Share

[fol 291] In witness whereof, we have hereto set our hands and seals this 8th day of June, 1908.

H. O. Harkness, T. M. Edwards, J. H. Byington, G. T. Hyde, E. C. Crocker, D. W. Stanrod, L. W. Johnson.

I, George F. Girard a Notary Public in and for the County of Bannock, State of Idaho, do hereby certify that on this 8th day of June, 1908, personally appeared before me, H. O. Harkness, T. M. Edwards, J. H. Byington, Geo. T. Hyde, E. C. Crocker, L. W. Johnson to me known to be the individuals described in the within instrument, and who executed the within instrument, and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein

mentioned. That they are bona fide residents of the State of Idaho, as set forth in the Articles of Incorporation.

Witness my hand and official seal the day and year in this certificate first above written.

Geo. F. Girard, Notary Public. (Seal.)

STATE OF IDAHO,
County of Bannock, ss:

I, E. G. Gallett official Recorder in and for Bannock County, of the State of Idaho, do hereby certify that the annexed is a full, true and correct copy of certain Articles of Incorporation of the Portneuf Marsh Valley Irrigation [fol. 392] Company, Limited, Number 11461, as the same appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 9th day of June, 1908.

E. G. Gallett, Recorder. (Seal.)

I, Thos. F. Terrell a Notary Public in and for the County of Bannock, State of Idaho, do hereby certify that on this 9th day of June, 1908, personally appeared before me, D. W. Standrod to me known to be the individual described in the within instrument, and who executed the within instrument, and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned. That he is a bona fide resident of the State of Idaho, as set forth in the Articles of Incorporation.

Witness my hand and official seal the day and year in this certificate first above written.

Thos. F. Terrell, Notary Public. (Seal.)

DEFENDANTS' EXHIBIT No. 19

State of Idaho,

Department of State

I, Fletcher A. Jeter, Secretary of State of the State of Idaho, do hereby certify that the annexed is a full, true and complete transcript of the certified copy of the articles of

incorporation of Portneuf-Marsh Valley Canal Company, Limited, which was filed in this office on the 21st day of [fol. 293] September A. D. 1908 and admitted to record.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State. Done at Boise City, the Capital of Idaho, this Twenty-sixth day of October, in the year of our Lord one thousand nine hundred and Twenty-three, and of the Independence of the United States of America the One Hundred and Forty-eighth.

Fletcher A. Jeter, Secretary of State. (Seal of the State of Idaho.)

Articles of Incorporation of the Portneuf Marsh Valley Canal Company, Limited

Know all men by these presents: That, whereas the Portneuf-Marsh Valley Irrigation Company, Limited, a corporation organized and existing under and by virtue of the laws of the State of Idaho, under the provisions of an act of Congress, approved August 16, 1894, commonly known as the "Carey Act," as amended, and pursuant to the laws of the State of Idaho, and of the rules and regulations of the State Board of Land Commissioners of the State of Idaho, did enter into a contract with the State of Idaho bearing date of June 3, 1908, for the reclamation of certain lands in said contract described situated in the County of Bannock in said State;

[fol. 294] And whereas, it is now proposed to organize a corporation for the operation and management of the irrigation system to be constructed under said contract of June 3, 1908;

Therefore, the undersigned have voluntarily associated themselves to form a corporation under the laws of the State of Idaho and do hereby certify:

1

That the name of the said corporation is the Portneuf Marsh Valley Canal Company, Limited.

2

That the purpose for which said corporation is formed is the management and operation of the irrigation system, as such, to be constructed by the Portneuf Marsh Valley

Irrigation Company, Limited, under said agreement of June 3, 1908, when and as the same may be turned over to it for operation by said Portneuf Marsh Valley Irrigation Company, Limited, and for that purpose and to the extent therefor required:

(a) To provide a convenient method of transferring the ownership and control of the dams, reservoir, canals, irrigation system and all rights, franchises and privileges pertaining thereto and connected therewith, constructed or to be constructed by said Portneuf Marsh Valley Irrigation Company, Limited, pursuant to said agreement of June 3, 1908, as the same shall be completed and turned over by said Portneuf Marsh Valley Irrigation Company, Limited, to this corporation, representing and comprising [fol. 395] the purchasers of shares and water rights in said irrigation system; to determine the rights of said purchasers of said shares and water rights as between themselves and between said purchasers and the said Portneuf Marsh Valley Irrigation Company, Limited; to operate and maintain said irrigation system and works as the same shall be completed and turned over to it during the period of construction and subsequent thereto; to levy and collect tolls, charges and assessments for the carrying on and maintaining of said irrigation system and management and operation thereof.

(b) When and as the same may be completed and turned over to it by the said Portneuf Marsh Valley Irrigation Company, Limited, to acquire the management, ownership and control, and to operate and maintain; (1) said irrigation and reservoir system; (2) those certain water rights and appropriations made and secured to said Portneuf Marsh Valley Irrigation Company, Limited, under and by virtue of Permit number 3317, of record in the office of the State Engineer of the State of Idaho, appropriating water from Portneuf River in said State; and (3) rights of way for dams, reservoir, main and distributing laterals acquired, owned or held by said Portneuf Marsh Valley Irrigation Company, Limited, by virtue of said contract of June 3, 1908.

(c) When and as such irrigation system may be turned over to it by the Portneuf Marsh Valley Irrigation Com-

pany, Limited, for operation, to distribute the waters diverted by and a part of the said irrigation system and to which this company may be entitled, among the stock [fol. 396] holders thereof; to maintain, operate and keep in repair said irrigation system; to fix, charge and collect from its stockholders and all users of water from its said irrigation system, tolls, rentals, assessments and maintenance charges based upon the number of shares of stock held by each person or proportioned to the amount of water used, or owned, or the number of acres irrigated by each person or by any one or more or by all of such methods, and to impose and collect fines and penalties for the failure of its stockholders or water users to pay the tolls, rentals, assessments or maintenance charges when the same become due.

(d) To take, purchase, lease, hire, or otherwise acquire, own and hold such real and personal property or any interests or rights therein, as may be required in the business of this corporation, namely, the management and operation of said irrigation system when and as it is turned over to it; and to enter into such contracts and agreements as the directors may deem necessary or proper in conducting the business for which this corporation is formed, as above set forth.

3

The place where the principal office of the company shall be located, and where its principal place of business shall be transacted is Downey, Bannock County Idaho.

4

That the term for which it is to exist is fifty years from and after the date of incorporation.

[fol. 397]

5

That the number of directors of the company shall be five (5).

6

That the amount of the authorized capital stock of the corporation shall be twenty thousand dollars ($20,000.00) divided into twenty thousand shares of the par value of one dollar ($1.00) each.

7

That the amount of said capital stock actually subscribed, the names of the persons by whom the same has been subscribed, and their residences as follows:

Name	Residence	Number of shares
E. C. Crocker	Downey, Idaho	40
Edwin Snow	Boise, Idaho	40
E. C. Crocker	Downey, Idaho	40
T. M. Edwards	Downey, Idaho	40
L. W. Johnson	Downey, Idaho	40
George T. Hyde	Downey, Idaho	40

In witness whereof, we have hereunto set our hands and seals this 17th day of September, 1908.

E. C. Crocker (Seal), Edwin Snow (Seal), George T. Hyde (Seal), L. W. Johnson (Seal), T. M. Edwards (Seal).

[fol. 398] State of Idaho,
County of Ada, ss:

On this 15th day of September, 1908, before me, J. H. Peterson, a Notary Public in and for said County and State, personally appeared Edwin Snow to me known and known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my notarial seal on the day and year in this certificate above written.

J. H. Peterson, Notary Public. (Seal.)

State of Idaho,
County of Bannock, ss:

On this 17 day of September, 1908, before me, William Laurenson a Notary Public in and for said county and State, personally appeared E. C. Crocker, George T. Hyde, L. W. Johnson and T. M. Edwards, to me known and known to me to be the persons whose names are subscribed to the within instrument, and they severally acknowledged to me that they executed the same.

such indebtedness is not then due, and no stock shall be transferable on the books of the Company, or otherwise, [fol. 402] until the same has been fully paid for, according to the contract or agreement under which the same was purchased from the Company and until all assessments levied thereon for any purpose whatsoever have been fully paid.

Sec. 7. Officers.—The President and Secretary of this corporation shall act as President and Secretary, respectively, of each stockholders' meeting, and they shall constitute a committee to pass on the authenticity of proxies.

Sec. 8. Order of Business.—At all meetings of stockholders the following order of business shall be observed, so far as consistent with the purpose of the meeting, viz:

Reading of Minutes of Preceding Meeting and Action thereon.
Report of President.
Report of Treasurer.
Report of Secretary.
Report of Superintendent.
Reports of Committees.
Election of Directors.
Unfinished Business.
New Business.

Article II.—Directors

Section 1. Management of Affairs.—The affairs of this corporation shall be managed by a Board of Five Directors, who shall be annually chosen at the annual meeting of the stockholders, except as by these by-laws otherwise provided.

[fol. 403] Section 2. Powers.—The Directors shall have full power and authority to carry on any business and exercise any and all of the powers conferred upon the corporation by its Articles of Incorporation, and without any further or special direction or authority from the stockholders.

Sec. 3. Election of Officers.—The Directors shall elect all other officers of the corporation, and such election shall be held annually as soon as possible after the annual stockholders' meeting.

Vacancies.—Vacancies in the Board of Directors may be filled by election by the remaining members of the Board at any regular meeting or at any special meeting called for such purpose.

Sec. 4. Regular Meetings.—The Directors may hold their meetings in such place or places within the State as the Board may from time to time determine and direct. Regular meetings of the Board shall be held monthly at the office of the Company, in Downey, Idaho, or at such other place in Bannock County, Idaho, as the Board of Directors may hereafter designate, on the first Monday of each month, at the hour of 2 o'clock P. M., if not a legal holiday; and, if a legal holiday, then on the next succeeding Monday if not a legal holiday. No notice shall be required of any such regular monthly meeting of the Board.

Sec. 5. Special Meetings.—Special meetings of the Board of Directors may be held whenever called by the President, or by three of the Directors for the time being in office. The Secretary shall give notice of any special meeting by [fol. 404] mailing the same at least three days before the meeting to each Director; but such notice may be waived by any Director. At any meeting at which every Director shall be present, even though without any notice, any business may be transacted.

Sec. 6. Quorum.—A majority of the Board of Directors shall constitute a quorum for the transaction of business; but if at any meeting of the Board there be less than a quorum present, a majority of those present may adjourn the meeting from time to time.

Article III—Officers

Section 1. Executive Officers.—The Executive officers of the Company shall be a President, a Vice President, a Superintendent, a Treasurer and a Secretary. They shall be elected by the Directors as soon as practicable after the election of Directors, and shall hold office for one year and until their successors are elected and qualified.

Sec. 2. Additional Officers and Agents.—The Board of Directors may appoint such other officers or agents as they shall deem necessary, who shall perform such duties as

from time to time may be prescribed by the Board of Directors, and the Board may vest the power to appoint such subordinate officers or agents in the President or Superintendent of the Company, or any other officer of the Company or in any Committee of the Board.

Sec. 3. Removal.—All officers and agents shall be subject to removal at any time by the affirmative vote of a majority [fol. 405] of the whole Board of Directors. All officers, agents and employees, other than officers appointed by the Board of Directors, shall hold office at the discretion of the Committee or of the officer appointing them.

Article IV—Duties of Officers

Section 1. President.—The President shall be the Chief Executive Officer and head of the Company, and in the recess of the Board of Directors shall have general control and management of its business and affairs. He shall preside at all meetings of the Board of Directors and stockholders, and shall, with the Secretary, sign all certificates of stock. He shall perform such other duties as may from time to time be required by the Board of Directors or by-laws of the Company.

Section 2. Vice President.—The Vice President shall be vested with all the powers and shall perform all of the duties of the President in his absence.

Sec. 3. Secretary.—The Secretary shall act as the Clerk of the Board of Directors and of all stockholders' meetings, and shall record all votes and the minutes of all proceedings in a book to be kept for that purpose. He shall give notice of all calls for installments to be paid by the stockholders, and shall see that proper notice is given of all meetings of the stockholders and of the Board of Directors. He shall, with the President, sign all certificates of stock. He shall be the custodian of the seal of the Company and affix it to all instruments required to be authenticated therewith, and shall perform such other duties as may be required of him by the by-laws of the Company or by the Board of Directors. [fol. 406]

Sec. 4. Treasurer.—The Treasurer shall keep full and accurate accounts of all receipts and disbursements in books

belonging to the Company and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Board of Directors. No money shall be paid out by the Treasurer unless upon warrants drawn on him and signed by the President and Secretary, and no such warrant shall be drawn by the President or Secretary except upon order of the Board of Directors, recorded in the minutes of the Board and in a Warrant Record to be kept by the Secretary. The Treasurer shall render to the President and Directors at the regular meetings of the Board, and whenever they may require it, an account of all his transactions as Treasurer, and of the financial conditions of the Company.

Sec. 5. Superintendent.—The Superintendent shall have charge of the Company's canal and irrigation system and control the headgates, waste-gates, taps, flumes and checks and the distribution of the water, and shall be the custodian of the tools belonging to the Company, and shall see that all such tools and property are kept in proper repair and safely stored and cared for; he shall see that the canal, headgates, flumes and other parts of the Company's irrigation system are kept in good repair and in such condition as will best serve the stockholders' interest and enable the Company to deliver to each the water to which they are entitled; he shall supervise and direct all labor in a judicious [fol. 407] and business-like manner, and keep proper account with all employees of the Company, showing the amount due such employees and for what the same is due, whether for services rendered or materials furnished; he shall make such report and reports to the President and Board of Directors as they may from time to time require, and shall faithfully and at all times carry out the instructions of the President and Board of Directors.

Sec. 6. Official Bonds.—The Directors may, by resolution, require any or all of the officers of the corporation to give bond with sufficient security, conditioned for the faithful performance of the duties of their respective offices.

Sec. 7. Absence of Officers.—In case of the absence of any officer of the Company, or for any other reason that may seem sufficient to the Board, the Board of Directors

may delegate his powers and duties for the time being to any other officer or to any Director.

Article V—Stock

Section 1. Stock Appurtenant to Land.—The Certificates for shares of the capital stock of the Company shall be in such form not inconsistent with these by-laws or the Certificate of Incorporation, or shall be prepared and approved by the Board of Directors. They shall be signed by the President, or, in his absence, by the Vice President, and also by the Secretary, and sealed with the corporate seal. The records of the Company and each and every certificate of stock issued, under which water shall be delivered [fol. 408] for the irrigation of land, shall contain a description of the lands to be irrigated and to which such shares and water rights shall be perpetually appurtenant, and thereafter such shares and water rights shall forever be dedicated and inseparably appurtenant to such lands, unless such shares of stock and the rights and interest created thereunder or accruing by reason of the ownership thereof shall become forfeited through a failure of the owner or holder thereof to pay assessments against such stock or for the use of water thereunder from such canal, or unless such stock shall be forfeited or sold by operation of law, or shall become forfeited under the provisions of these by-laws for failure of the holder thereof to comply with such by-laws and the rules and regulations of the Company.

Sec. 2. Transfer of title. Every transfer of the title to any lands to which the said rights and shares are appurtenant, whether by grant or by operation of law (except where the lands may be subjected by grant, or involuntarily under any law, to an easement, the exercise of which does not interfere with the cultivation of the soil by the servient owner) shall operate, whether to be expressed therein or not, as a transfer to the grantee or successor in title, of all rights to the use of water for the irrigation of said lands, also all rights arising from, or incident to, the ownership of such shares, as well as the shares themselves; and upon presentation to this company of proof of any such transfer of land, the proper officer shall transfer such shares of stock upon the books of the successor in title to said lands.

Sec. 3. Transfer of shares—When Void.—Any transfer or attempted transfer of any of the shares of this Company, [fol. 409] made or suffered by the owners thereof, unless simultaneously a transfer of the land to which it is appurtenant is made or suffered in favor of the same party, shall be of no force or effect for any purpose, and shall confer no rights of any kind whatever on the person or persons to whom such transfer may have been attempted to be made.

Sec. 4. Amount of Water.—The amount of water to be delivered to such stockholder shall be that proportionate part of all the water flowing in said canal and available for distribution by the Company during any irrigation season, as the number of shares owed by him as above stated, shall bear to the whole number of valid and subsisting shares dedicated or made appurtenant to land and using water from said canal; such water to be delivered to and upon the lands described in the certificate of stock or water contract at such time or times during the irrigation season as the stockholder may direct. The manner of delivering, measuring and regulating the supply to the stockholder shall be prescribed by the Company and shall at all times be under its control, and the Board of Directors of the Company may make such rules and regulations regarding the distribution and delivery of water as in their judgment may appear necessary or expedient and for the interest of the Company and its stockholders.

Sec. 5. Expense of Maintenance.—For the purpose of defraying the expenses of the Company of whatsoever kind and paying the cost for maintaining, managing and operating said canal system, the Board of Directors of the Company are authorized and directed to levy such tax or taxes, charge or charges, assessment or assessments, as in [fol. 410] the judgment of said Board may appear necessary or proper to raise the money or revenue required. All such expenses, taxes, costs and charges to be apportioned among all the stock issued by the Company, which has been applied and made appurtenant to land, but no such assessment or tax shall be levied against shares which have been issued to or are held for the benefit or in the interest of The Portneuf Marsh Valley Irrigation Company, Limited, and which has not been sold or made appurtenant to land.

The taxes or assessments herein provided for, shall be levied against the owners of the shares of stock applied or made appurtenant to land, regardless of whether water has been used for irrigation purposes by the holder of said stock.

The Directors shall give notice by publication in a newspaper for a period of two weeks, of the amount of said charge, tax or assessment against each share of stock and of the time and place of payment thereof. Upon the failure to pay such charge, tax or assessment for a period of ten days after the same falls due the Board of Directors may refuse to deliver water to the holder of such stock or for the land described in such stock certificate, until such charge, tax or assessment, with any fines or penalties imposed by the Board of Directors or by the rules and regulations of the Company, have been fully paid.

The Board of Directors may at any time after the first of January of each year, make an estimate of the amount of money necessary for the maintenance, repair, control and operation of the Company's canal and irrigation system and other necessary expenses of the corporation, and at such meeting or at a subsequent meeting, may levy the [fol. 411] tax, assessment or charges hereinbefore referred to, and may make such other and subsequent levies as the needs of the Company may from time to time require, and may provide that such taxes, charges and assessments may be paid in installments.

Sec. 6 Statutory Assessments.—In addition to the method provided in these by-laws for raising revenue and money for the use of the Company, the Directors may levy assessments upon the stock of the corporation as provided by the laws of the State of Idaho, but no stock shall be regarded as issued within the meaning of such laws, unless the certificate therefor contains a description of the land to which such stock and the water to be delivered thereunder shall be applied and made appurtenant.

Sec. 7. Unissued Stock.—The unissued stock of this corporation shall be held subject to the order of the Portneuf Marsh Valley Irrigation Company, Limited, and shall be issued to or at the request of the said Portneuf Marsh Valley Irrigation Company, Limited, to be by it delivered

to purchasers of water rights in such manner and on such terms as said Company may deem proper. Such stock while in the hands of the said Portneuf-Marsh Valley Irrigation Company, Limited, before sale to water users and before applied to or made appurtenant to land, shall have no voting power and shall not be subject to any tax, assessment or charge of any kind, made or levied by this corporation, but shall for all purposes be regarded, until so issued, applied and made appurtenant, as unissued stock of this corporation.

[fol. 412] Sec. 8. Shares Held Subject to Rights of the Portneuf-Marsh Valley Irrigation Company, Limited.—All shares in this corporation shall be held subject to the rights of the Portneuf-Marsh Valley Irrigation Company, Limited, until the amount due such Company, its successors or assigns, shall have been fully and finally paid, as provided in the contract between said corporation and the purchaser of shares and as provided in the contract between the said Portneuf-Marsh Valley Irrigation Company, Limited, and the State of Idaho.

Sec. 9. Default in Payments.—Upon this Company being notified under oath by the Portneuf-Marsh Valley Irrigation Company, Limited, its successors or assigns, that any stockholder in this corporation has defaulted in his payments, or any of them to be made under his contract of purchase of water right, pursuant to which stock in this Company was issued, no water from the canal of this Company, or any of its laterals, shall be delivered to such stockholder or for the use or benefits of the land described in such stock certificate, until the amount so due The Portneuf-Marsh Valley Irrigation Company, Limited, its successors or assigns, has been fully paid or otherwise adjusted to the satisfaction of such Company, its successors or assigns.

Sec. 10. Additional Rules and Regulations.—The Board of Directors shall have power and authority to make all such rules and regulations as they may deem expedient, concerning the issue, transfer and registration of certificates of the shares of the capital stock of the Company.

[fol. 413] Article VI—Miscellaneous

Section 1. Fines and Penalties.—The Board of Directors are hereby authorized and empowered to impose such fines and penalties as they deem proper, for the failure of the stockholders to pay their assessments as they become due, or for violating any of the provisions of the by-laws or of the rules and regulations adopted for the management of the canal and the distribution of the water.

Sec. 2. Right of Way.—The necessary right of way through the land of the stockholders is hereby granted to the Company for any canals or laterals which the Company may deem necessary or expedient to construct in order to properly serve all its stockholders.

Sec. 3. Waste Water—Repair of Canal.—In the event there shall be an accumulation of waste water sufficient for a beneficial use, the Company shall have the first right to the use of such water. The Company may shut off the water for the purpose of general or special repair of its canals, flumes or gates, or for any other purpose incidental to the conduct of its business, at such times as urgent necessity may require, but shall restore the water in such canals as speedily as the nature of the case will permit.

Sec. 4. Seal.—The Board of Directors shall provide a suitable seal, with the name of the Company in circular form about the outer edge and the words "Corporate Seal" in the centre thereof, so mounted as to be capable of impressing said words on paper in raised letters, which seal [fol. 414] shall be in charge of the Secretary.

Sec. 5. Fiscal Year.—The fiscal or business year of the Company shall begin on the 1st day of January and end on the 31st day of December following.

Sec. 6. Amendments.—These By-Laws may be altered, amended or repealed at any annual or special meeting for that purpose, of the stockholders, and until otherwise provided these by-laws may be amended, modified and repealed and new by-laws, rules and regulations adopted at any regular meeting of the Board of Directors by a vote of four fifths thereof, but no amendment, alteration or repeal shall be made by either the stockholders or the Board

of Directors of the following sections of Article V., to wit: Sections 5, 6, 7, 8 and 9, in so far as the rights or interests of the Portneuf-Marsh Valley Irrigation Company, Limited may be affected, without the consent of such Company in writing.

We, the undersigned Directors of The Portneuf-Marsh Valley Canal Company, Limited, do hereby certify that the above and foregoing By-laws which appear in this By-Law Book, are the full, true and correct By-Laws of said Company, as adopted at a meeting of the stockholders thereof held for that purpose, after due notice given therefor, on the 18 day of September, A. D. 1908.

[fol. 415] In witness whereof, we have hereunto set our hands and caused the seal of said corporation to be affixed thereon.

L. W. Johnson, T. M. Edwards, Geo. T. Hyde, E. C. Crocker, Edwin Snow, Directors.

Attest: Edwin Snow, Secretary. (Seal.)

Call and Waiver of Notice for First Meeting of Stockholders of the Portneuf-Marsh Valley Canal Company, Limited.

We, the undersigned, being all the incorporators of the Portneuf-Marsh Valley Canal Company, Limited, do hereby call the first meeting of the stockholders thereof, to be held at the Town of Downey, Bannock County, Idaho, on the 18 day of September, 1908, at 10 A. M., for the organization of the Company, the election of a Board of Directors, the adoption of by-laws, and for the purpose of considering and transacting all such business as may be [fol. 416] incident thereto, or that may properly come before said meeting; and we hereby waive all requirements as to notice or publication of the time, place and purposes of this first meeting, and consent to the transaction thereat of any and all business pertaining to the affairs of the Company.

Dated this 18 day of September, 1908.

L. W. Johnson, T. M. Edwards, Geo. T. Hyde, E. C. Crocker, Edwin Snow.

Minutes of the First Meeting of Stockholders of the Portneuf-Marsh Valley Canal Company, Limited, Held September 18, 1908

Pursuant to written Call and Waiver of Notice, the first meeting of the stockholders of the Portneuf-Marsh Valley Canal Company, Limited, was held in the Town of Downey, Bannock County, Idaho, on the 18 day of September, 1908, at 10 A. M.

Mr. T. M. Edwards was chosen Chairman and called the meeting to order; Mr. Edwin Snow was appointed Secretary of the meeting.

[fol. 417] All the stockholders of the Company were present in person.

The Secretary presented the Call and Waiver of Notice pursuant to which the meeting was held, duly signed by all of the stockholders of the Company. Said Call and Waiver was ordered spread upon the minutes and is as follows:

"We, the undersigned, being all the incorporators of The Portneuf-Marsh Valley Canal Company, Limited, do hereby call the first meeting of the stockholders thereof, to be held at the Town of Downey, Bannock County, Idaho, on the 18 day of September, 1908, at 10 A. M., for the organization of the Company, the election of a Board of Directors, the adoption of By-Laws, and for the purpose of considering and transacting all such business as may be incident thereto, or that may properly come before said meeting, and we hereby waive all requirements as to notice or publication of the time, place and purposes of this first meeting, and consent to the transaction thereat of any and all business pertaining to the affairs of the Company.

Dated this 18 day of September, 1908."

The Chairman then presented the Certificate of Incorporation and a copy of the Articles of Incorporation of the Company, showing that the Company had been duly incorporated. The same were received and ordered filed with the Secretary.

The Chairman then presentd a form of By-Laws prepared [fol. 418] by counsel for the Company, which were read article by article, and as a whole, unanimously adopted as

the By-Laws of the Company, and ordered entered in the Minute Book.

The Chairman then announced as next in order the election of a Board of Five Directors, to serve until the next annual meetings of stockholders, and until the election and qualification of their successors. L. W. Johnson and E. C. Crocker were appointed to conduct the election, which was by ballot, and which resulted in the election of the following persons as Directors, by the unanimous vote of all present: T. M. Edwards, L. W. Johnson, E. C. Crocker, Geo. T. Hyde and Edwin Snow.

There being no further business before the meeting, it was adjourned.

(Signed) T. M. Edwards, Chairman.

Attest: (Signed) Edwin Snow, Secretary.

Call and Waiver of Notice for First Meeting of Directors of the Portneuf-Marsh Valley Canal Company, Limited

We, the undersigned, being all the Directors of The Portneuf-Marsh Valley Canal Company, Limited, do hereby call the first meeting of the Directors of said Company, to be held at the Town of Downey, Bannock County, Idaho, at [fol. 419] 10:15 A. M., on the 18 day of September, 1908, for the purpose of electing officers of the Company, and doing all such other things as may be necessary or desirable in connection with the organization of the Company or for the promotion of its business, and we hereby waive all statutory and by-law requirements as to notice of time, place and objects of this meeting, and consent to the transaction thereat of any and all business pertaining to the affairs of the Company.

Dated this 18 day of September, 1908.

L. W. Johnson, T. M. Edwards, Geo. T. Hyde, E. C. Crocker, Edwin Snow.

Minutes of First Meeting of Directors of The Portneuf-Marsh Valley Canal Company, Limited, Held September 18, 1908

Pursuant to written Call and Waiver of Notice the Board of Directors of The Portneuf-Marsh Valley Canal Com-

pany, Limited, held its first meeting at the Town of Downey, Bannock County, Idaho, at 10:15 A .M., on the 18 day of September, 1908.

[fol. 420] T. M. Edwards was chosen Temporary Chairman and Edwin Snow was appointed Secretary of the meeting.

All members of the Board were present as follows:

T. M. Edwards, E. C. Crocker, E. W. Johnson, W. A Hyde and Edwin Snow.

On request of the Chairman, the Secretary presented the Call and Waiver of Notice pursuant to which the meeting was held, duly signed by all the members of the Board. It was ordered spread upon the minutes and is as follows:

"We the undersigned, being all the Directors of The Portneuf Marsh Valley Canal Company, Limited, do hereby call the first meeting of the Directors of said Company, to be held at the Town of Downey, Bannock County, Idaho, at 10:15 A. M., on the 18 day of September, 1908, for the purpose of electing officers of the Company, and doing all such other things as may be necessary or desirable in connection with the organization of the Company or for the promotion of its business, and we hereby waive all statutory and by law requirements as to notice of time, place and objects of this meeting, and consent to the transaction thereat of any and all business pertaining to the affairs of the Company.

Dated this 18th day of September, 1908."

The President then announced as the next order of business the election of permanent officers for the Company, to serve for the remainder of the corporate year and until the election of their successors, whereupon the following officers were unanimously elected:

[fol. 421] President	E. W. Johnson.
Vice-President	Geo. T. Hyde.
Treasurer	T. M. Edwards.
Secretary	Edwin Snow.

The permanent officers of the Company thereupon took charge of the meeting.

The following motions were then made, seconded and duly passed by the unanimous vote of all present.

Resolved, That the Secretary be hereby instructed to procure a book of stock certificates in proper form, and a corporate seal, as provided for in the by-laws of the Company; also all such record, stock and transfer books and books of account, and stationery and office supplies as may be necessary for the proper operation and record of the Company's business and transactions.

Resolved, That the stock certificate of the Company shall be held at Pocatello, Idaho, and that in all calls or notices of Land Commissioners of the State of Idaho, as set forth in the contracts between the Portneuf-Marsh Valley Irrigation Company, Limited, and the purchasers of water rights from such Company.

On motion the following resolution was unanimously adopted:

Resolved, That meeting of the Board of Directors may be held at Pocatello, Idaho, and that in all calls or notice of meetings of the Board of Directors the place of meeting shall be designated therein, which shall be either at the office of the Company at Downey, Bannock County, Idaho, or some place to be designated in the call, at Pocatello, Idaho, and that all business transacted at any meeting of [fol. 422] the Board of Directors held at Pocatello, Idaho, shall be as valid and legal as if said meeting had been called and held at the office of the Company at Downey, Idaho.

On motion the following resolution was unanimously adopted:

Resolved, That the President and Secretary are hereby authorized and directed to execute and deliver certificates of stock in this corporation to the purchasers of water rights from the Portneuf-Marsh Valley Irrigation Company, Limited, as may be requested by said Company; provided, that no certificate shall be issued as fully paid until the said Portneuf-Marsh Valley Irrigation Company, Limited, has received in cash from such purchaser, to be applied to the payment of such water right or credited to such purchaser thereon, an amount equal to the par value of the stock issued to such purchaser; but such payment having been made or credit given, stock shall be issued as fully paid, and shall be deemed and considered fully paid

for any and all purposes, and the final transfer of such irrigation system to this corporation by the Portneuf-Marsh Valley Irrigation Company, Limited, shall be payment in full to this corporation for all stock issued at the request of the said Portneuf-Marsh Valley Irrigation Company, Limited, or to purchasers of water rights from such Company, and the said Portneuf-Marsh Valley Irrigation Company, Limited, shall not be liable to this Company for any stock issued at its request, except to transfer to this Company the said irrigation system as may be by law provided and as provided in the contract between said Company and the State of Idaho, dated June 3, 1908.

[fol. 423] There being no further business before the meeting, it was adjourned.

Edwin Snow, Secretary.

IN UNITED STATES DISTRICT COURT

JUDGE'S CERTIFICATE TO STATEMENT OF EVIDENCE

It appearing that the within and foregoing statement of evidence and proceedings was lodged in due time with the Clerk of this Court and that notice of such lodgment and notice of proposed settlement thereof was given to the attorneys for defendants, and it appearing that the said statement is true, complete and properly prepared, and the parties hereto have stipulated that the same may be settled and allowed.

It is, therefore, ordered that the same be settled and allowed as a true, complete and correct statement of the evidence and exhibits introduced in said cause, the evidence being reduced to narrative form.

Dated this 9th day of October, 1924.

F. S. Dietrich, District Judge.

[File endorsement omitted.]

[fol. 424] In United States District Court

Memorandum Opinion—Filed January 18th, 1924

Dietrich, District Judge:

The controversy grows out of the Downey Carey Act Irrigation project in Bannock County, Idaho. Primarily the question is whether or not assessments levied by a Carey Act operating Company for the necessary expense of maintaining and operating the system upon stock issued pursuant to contracts of sale to settlers purchasing water rights, are valid as against and superior to the claim of the construction company and its assignees for deferred unpaid installments on account of the purchase price of the water rights; and secondarily, whether or not in view of certain irregularities of procedure, the specific assessments exhibited in the record are valid.

While the questions are thus generally outlined, unfortunately, as is true touching most controversies growing out of Carey Act enterprises, it is difficult to discuss them intelligibly without at least a brief general review of Carey Act law and practice.

[fol. 425] The project under consideration involved the construction of a reservoir at the head-waters of the Portneuf River, and a system of canals by which both the stored water and the natural flow of the stream were to be diverted and applied to a body of approximately 20,000 acres of land in the vicinity of Downey. In most respects, both of organization and history, it has run the course of other like projects in the state: The "discovery" by a promoter, or a few local citizens, of the requisite natural resources, the acquisition at a nominal cost of a permit to appropriate the water to be used, persuasion of the State Land Board to make application to the Secretary of the Interior for the withdrawal from entry of public lands embraced within the proposed project, contract by the state with the Secretary of the Interior for reclamation under the Carey Act, organization by the promoters of the "construction" corporation, with large authorized capital stock but no real capital, the transfer to it by the promoters of the water permit and other "rights", contract by the state, acting through the State Land Board, with this corporation for

the construction of the works, with the exclusive privilege to it of selling water rights to settlers at stipulated prices, the execution of a trust deed by the corporation upon all its property presently owned and afterwards acquired, to secure an issue of bonds, by the sale of which money is pro [fol. 426] cured to carry on the construction work, sale of water rights to future settlers, with a small cash payment and the balance in deferred installments, with lien on the water right and the settler's entry to secure payment, the pledging of these contracts in part to the trustees as further security for the bond issue, temporary operation of the partially constructed system, either by the construction company or by the operating company organized to take over the system when complete, demonstration of the inadequacy of the water supply or of the system, controversy by the settlers on the one hand and the promoting company and the bondholders on the other, litigation and ultimate adjustment, and final turning over of the system to the operating company, the stock of which is held by the purchasers of water rights and by the construction company—such, as a matter of public knowledge, is the usual course, and insofar as the facts are disclosed by the record this project does not seem to be an exception to the rule.

In view of the contention not infrequently urged that because of its quasi public character the construction or promoting company is to be regarded as occupying a favored position, it is well at the outset to have an understanding of its real status. In a certain sense it renders a public service, and for certain purposes it may be regarded as being, nominally at least, a trustee, but its rights and obligations are defined by contract or by statute or by law, and in [fol. 427] fact, it is neither altruistic in motive nor disinterested in purpose. If in theory it is only an agency of the state to be reimbursed for its actual expenditures for construction work by receipts from the sale of water rights, in fact it has, within the limits of the law, the characteristics and functions of a promoting company with the hope, not groundless, of large profits. While this view may seem to be out of harmony with expressions that may be found in some of the earlier decisions of the state courts, it is thought to have support in fact and in the more recent decisions. The enterprise is initiated not by the state but by

the construction company, or by the initial promoters whom it succeeds, and it, and not the State Land Board, makes the proposal which ultimately becomes the substance of the construction contract. The acreage charge for water is so fixed that if the project turns out approximately as planned a large profit is realized. The project under consideration is typical. The promoting company—the Portneuf-Marsh Valley Irrigation Company, with a capital stock of $500,000, consisting of 5,000 shares of a par value of $100 per share, was organized by seven persons subscribing for one share each, or a total of $700 out of the $500,000 capital stock. They entered into a contract with the state for the construction of the system, which in the contract it is expressly estimated would cost $275,000. The system was to supply [fol. 428] water for the irrigation of approximately 20,000 acres of land, and the promoting company was authorized to sell water rights at the rate of $35.00 per acre for most of the land, and $25.00 per acre for the balance. If therefore we assume an average charge of only $30.00 per acre, the total possible return to the promoting or construction company from the sale of water rights was $600,000 as against an estimated outlay of $275,000.

Coming now to a consideration of the specific issues, and the circumstances out of which they arise:

By regular succession the plaintiffs are the successors in trust of the trustees named in the trust deed, covering the system, and executed by the promoting Company in October, 1909, to secure the payment of a contemplated bond issue of $300,000. The contract between the promoting company and the state for the construction of the system bears date June 3, 1908, and the contract between the state and the United States, May 14, 1908; and apparently many water rights in the system had been sold to settlers, and contracts therefor were outstanding, at the time the trust deed was executed. While the relation of the rights of the settlers and of the plaintiffs is of incidental importance, a general discussion of the law or of the provisions of the several contracts, including the trust deed, is unnecessary because, as I understand, the plain- [fol. 429] tiffs concede that, insofar as concerns the issue to be decided, they stand in the shoes of the construction company and have no greater rights. Indeed, the written

brief on behalf of the plaintiffs is introduced by the statement that, "the only controverted issue presented for decision in this case is the relative priority of the line of the Portneuf Marsh Valley Irrigation Company, Ltd., (the construction company) for the purchase price of its water rights as against the lien of the Portneuf Marsh Valley Canal Company, Ltd., a Carey Act settlers' operating Company, by reason of assessments for maintenance." And in passing it may be added that in Article I of the trust deed there is an express provision to the effect that so long as the construction company is not in default it "may sell, and may exchange for other property, free of the lien hereof, water and water rights to bona fide purchasers thereof and receive and collect the proceeds of such sales and trades precisely as if this mortgage had not been made." And there is no allegation or proof of existing default when any of the water rights presently involved were sold. Hence we shall not need to construe or apply Section 3639 of the Idaho Compiled Statutes providing protection for purchasers of water rights. The further statement of facts and discussion of the issues will therefore be upon the assumption that the status of the plaintiffs is the same as that of the construction company.

[fol. 430] As such trustees the plaintiffs also hold in pledge for the payment of bonds numerous settlers' contracts for the purchase of water rights, upon which deferred installments of the purchase price are still due. This is in accordance with the provision of the trust deed requiring that at all times the trustees must have in their possession such contracts or other securities to the amount, in face value, of 150% of the outstanding bonds. By this suit plaintiffs seek to foreclose the trust deed for default in the payment of bonds, and no question is made by either of the defendants of the right to foreclose for the total amount remaining due upon the bonds.

One of the defendants is the promoting or construction company, namely the Portneuf Marsh Valley Irrigation Company, Ltd., a corporation, by which the trust deed and bond were executed. It is insolvent and makes no defense, and, as is usually true in such cases, it is to be inferred that, directly or indirectly, it is under the control of the plaintiffs as trustees, and such moves as it makes are actu-

ated under their direction. The other defendant is the Portneuf Marsh Valley Canal Company, Ltd., a corporation, which in Carey Act practice under the state law, is known as an operating company. Such a corporation is provided for in the state contract, to which reference is made in the trust deed, and to the provisions of which the [fol. 431] trust deed is subject, and is intended as a convenient entity by which the legal title to the irrigation system is permanently held and by which it is maintained and operated. Ostensibly it has a capital stock consisting of a number of shares equal to the number of acres to be irrigated, shares being of the nominal value of $1.00 each; and instead of deeding to each purchaser of a water right the stipulated amount of water he purchases, together with his proportionate interest in the canal system, the whole system, including the water right, is by the construction company deeded to the operating company, and the latter issues to each settler stock at the rate of one share per acre for his water right. In that way the operating company takes over the system, and it is managed and controlled by directors elected as in ordinary corporations. It thus appears that the only property owned by the corporation is the irrigation system, from which it can get no revenue and for the expense of maintaining and operating of which it is entirely dependent upon assessments upon its issued stock.

In conformity with the general practice in such cases, and pursuant to the express provisions of its contract with the state, the construction company organized the defendant Canal Company with a capital stock of 20,000 shares. As steps in the organization, it prepared the articles of incorporation and an elaborate set of by-laws, all of which [fol. 432] are in evidence. The system was thereupon deeded to the operating company, with certain stipulations agreed to by both the grantor and grantee. The stock of the operating company was issued to the several holders of water contracts in proportion to their holdings, subject to a lien for the unpaid purchase price as provided for by the state contract and the settlers' contracts, and the balance of the stock for which the construction company had not sold water rights was issued to it. By subsequent agreement with the settlers, this latter stock, until sold

by the construction company, was not chargeable with the burdens of maintenance and operation.

It would seem that while originally the irrigation of 20,000 acres was contemplated, for some reason—presumably the ascertained inadequacy of the available water supply or the canal system, or both—the plan was later modified and the acreage cut to 14,000 acres, and of this area the promoting company succeeded in selling rights for only about 12,240 acres. Of the 14,000 shares of stock in the operating company, authorized to be issued, it therefore continued to hold and now holds 1,760 shares, representing a proportionate interest in the irrigation system. As to these shares and the beneficial interest in the system they represent, there is no controversy, the Canal Company conceding that by foreclosure and sale the purchaser will succeed to and acquire the interest of the construction [fol. 433] company. So upon the other hand, the plaintiffs concede that by foreclosure and sale neither they nor the purchaser will get anything in respect to shares of stock held by settlers who have fully paid for their water rights, or in respect to the beneficial interest in the system represented by such stock. Nor as to stock held by settlers for water rights not fully paid for, but in respect to which there is no default, will they get anything other than the right possessed by the construction company, and its assignees, namely, the right to receive such unaccrued installments as are still to be paid.

We are thus brought to a consideration of the immediate facts underlying the primary question stated in the beginning of the discussion.

Upon taking over the system, the operating company was under obligation to maintain and operate it, and to meet the expense of such operation it from time to time, as there was need, levied assessments upon the stock issued to settlers, all pursuant to the provisions of the contract with the state, the settlers' contracts and the by-laws, which as we have seen were prepared and virtually adopted by the promoting company. Upon default in payment by the settlers, which occurred in numerous cases, the delinquency was advertised, and, the stock having been offered for sale pursuant to notice, and there being no other bidders it was sold to the company itself for the amount of the assessment, plus in-

[fol. 434] terest and penalties. Pursuant to a by-law or standing resolution the stock so bought in was and is held by the company with the privilege to the original holder, or his assigns, to redeem it by paying the amount for which it was sold, together with interest and all subsequent assessments and interest thereon. This stock, aggregating 5,495.2 shares, the company now claims to own, together with the proportionate beneficial interest represented thereby in the system, subject, however, to the privilege of redemption just explained. In all such cases the settlers also defaulted in the payment of the installments due upon their water contracts with the construction company, which contracts are held in pledge by the plaintiffs as trustees. And in some instances the trustees foreclosed the lien, provided for in the contracts, upon the land and water stock and became the purchaser of both the land and the water right represented by the stock, and in other cases for a small consideration they acquired the land and water right by deed directly from the settler without suit. Conceding for the time being the validity of the assessments made by the operating company, and the regularity of the proceedings relating to the sales for delinquency, plaintiffs contend that the operating company is practically without right or remedy, and that the interest it thus acquired is subordinate to the right of the promoting company, and hence [fol. 435] of their right as well, to receive the full amount which the settlers originally agreed to pay for the water. This view I am unable to take for several reasons:

In the first place it is manifestly so harsh and inequitable that it ought not to be adopted, unless it is clearly supported by law and the contracts by which the rights of the parties are defined. In the very nature of things a property of this kind cannot be preserved, to say nothing of operation, without continual care and very substantial expense, and if its right to divert water is to be maintained intact, and indeed if its physical structures are to be preserved, it must be operated at further expense. The necessity of distributing the burden was recognized in the beginning, and accordingly a provision was put into the contracts that maintenance charges should be levied upon the issued stock, whether the stockholder used or did not use the water. When at least some of the contracts were entered into by the settlers, it

was contemplated that the burden would be distributed to 20,000 shares of stock, and later, when the controversy was adjusted between the settlers and the construction company and the acreage was cut down to 14,000 acres, the settlers who entered into the arrangement could fairly assume that the burden of maintenance and operation would be distributed to 14,000 shares. But however that may be, water [fol. 436] rights for 12,240 acres were actually sold, and this amount of stock thus undoubtedly became subject to assessment. Under the theory of the plaintiffs this heavy burden which was to be borne by at least 12,240 shares is to be shifted entirely to approximately half that number, the holders of which have persevered in the difficult task of reclaiming their lands, and they are to bear the entire burden of preserving for an indefinite period a property in which the plaintiffs claim to own more than one-half of the beneficial interest. Suppose that these remaining farmers also had lost courage and abandoned the enterprise, what would have become of the plaintiffs' security?

Under a reasonable construction, it is not thought that Section 3019 of the Idaho Compiled Statutes, much relied upon by the plaintiffs, supports their position. It is as follows:

"Any person, company or association, furnishing water for any tract of land, shall have a first and prior lien on said water right and land upon which said water is used, for all deferred payments for said water right; said lien to be in all respects prior to any and all other liens created or attempted to be created by the owner and possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which said water right was acquired."

[fol. 437] Were the provisions applicable to the case, in the light of the facts presently to be explained, it would, by express limitation, make such a lien as the plaintiffs claim upon any given piece of land, and the appurtenant water right, superior only to a lien created by the owner of such land. No such lien is here asserted by the operating Company. Neither nominally nor actually was the assessment or sale for delinquency made by the owner of the land; both were made by the corporation, acting through its

board of directors, an entity entirely distinct from the land owner, although he was a holder of some of its stock. And so far as appears the assessment may have been made not only without his consent but against his will—as is often the case with such assessments, particularly if the land owner is not making use of the water. Without success, a Carey Act trustee made a similar contention against the lien of a tax in the case of Cont. & Com. Savings Bank v. Werner, 36 Ida. 602, 215 Pac. 458. The reasoning of the court there is sound, and is equally applicable to this case. If fallaciously it be argued that the *the* assessment lien upon A's stock is voluntarily created by him because the assessment was levied by at least a quorum of the board of directors, for some of whom he may have voted, with equal relevancy it could be said that the lien of a tax upon his land is voluntarily created by him because as a qualified [fol. 438] elector he may have voted for some or all of the county commissioners by some or all of whom the tax was levied. It is sought to give plausibility to the contention by assuming not only that the farmers, acting as a unit, unanimously elected the board of directors, but that they were the only qualified voters. Were such assumptions material, it could be pointed out that they are without foundation in fact. Admittedly the water rights under consideration were never fully paid, nor is there any showing that even 35% of the price was ever paid, and it is a fair inference that the holders were in default when the assessments in question were made. But by the terms of the original contract with the state, and of the settlers' contract, where a water right is not fully paid for, the purchaser is required to indorse and deliver the stock to the construction company, with power in it to vote such stock as it may deem proper so long as 65% of the purchase price remains unpaid. And in the new agreements executed by the settlers after the general settlement in March, 1915, of certain controversies between the settlers and the construction company, it is expressly provided that the settler's stock is to be delivered to the company, and that the voting power remain in the settler only so long as he is not in default. In case of default the company is empowered to vote the stock as it may see fit. It therefore appears that the pro- [fol. 439] moting company and not the settler had the power, under the stock in controversy, to vote for directors.

But if we were to give to this statute the construction urged by the plaintiffs, how does it apply to the facts? It is uncontroverted that the settler's contract is one not for sale but of sale of at water right, and of the requisite shares of stock in the operating company. The settler "hereby purchases Certificate No. X for Y shares of the capital stock of the Portneuf-Marsh Valley Canal Company, Ltd."; such is the language of the instrument. And indeed, whether the full purchase price has been paid or not the settler is recognized in all the pertinent writings as having title to and being the owner of the stock and water. The right of the promoting company is that of a lienor for the unpaid balance of the purchase price. But as we have seen, by the express terms of the trust deed the sale of a water right operated, ipso facto, to release it and the proportionate interest in the system from the lien of the trust deed, and the trustees were in turn protected by a deposit with them, in pledge, of the settler's contract of purchase. The trustees are here seeking to foreclose only the lien of the trust deed; they are not, as pledgees, attempting to foreclose the liens of water contracts; to such proceedings the several settlers would of course be indispensible parties; and in any view of the statute in question it [fol. 440] can have application only to such liens and to such proceedings. It therefore follows that insofar at least as concerns the stock embraced in the 5,495.2 shares that pertains to water contracts which are still outstanding, and have not been taken over by the plaintiffs, the statute has no application. And it may be added, it is difficult to see how upon any theory such contracts or stock are at all within the issues of this suit. The remainder of the 5,495.2 shares plaintiffs already hold, all rights of the original purchasers therein and in the water contracts and in the proportionate parts of the irrigation system represented thereby, having been acquired by them at sales upon the foreclosure of such contracts, or by voluntary conveyances directly from the settlers. By reference to Article XV of the trust deed, it will be seen that by its express terms the trustees were authorized to pay assessments and other charges against the stock, and in case of the default of a settler, to foreclose the water contract; and in the absence of other bids in an amount sufficient

to cover their entire claim under the contract they are authorized to become purchasers, "and thereupon said lands and water shall become subject to the lien" of the deed "to the same extent as if said property had been specifically named" therein. I find no provision expressly authorizing the taking of voluntary conveyances directly from the settler, but if, as contended by the plaintiffs, that author-
[fol. 441] ity is implied, and a conveyance so taken has the status of a sheriff's deed on foreclosure, then in all cases where they have acquired the settler's rights, and have become the owners of both land and water, they hold such land and water in trust for the promoting company, subject to the lien of the trust deed. But however that may be, plainly the liens of the water contracts originally issued to the settlers, have been fully extinguished, and the statutory provision under consideration could not longer have any application. And, it may be added, together with the lien of the contract has gone the obligation of the settler to pay, for under the provision of the trust deed, above referred to, the trustees were authorized only to bid the full amount due upon the contracts, including interest and costs, and presumably when voluntary conveyances were taken the settlers' contracts were thus satisfied and terminated. So that if we were to take the view of the statute contended for by the plaintiffs, there would be no lien superior to the right of the operating company under its assessment sales, for there is nothing at all due from the settlers to the promoting company or the plaintiffs, and neither it nor they have any lien at all by virtue of the water contracts, either superior or inferior.

[fol. 442] In the next place it is thought that were the statute applicable to the issues and were it susceptible to the construction placed upon it by the plaintiffs, they could not succeed for the reason that such meaning is inconsistent with the contracts and by-laws binding upon the promoting company. By these instruments it must be deemed in advance to have waived such superior right as the statute would have conferred, and they are now estopped to claim such right. It is to be borne in mind that not only did the promoting company enter into the contract with the state before any sales were made to settlers, but it prepared in advance of such sales the form of settler's contract, and

also organized the operating company, preparing its articles of incorporation and its by-laws, and that the operating company was under its control until the water rights, or, at least, a large number of them, were sold, and the stock of the operating company issued. Any ambiguities therefore in the instruments are to be resolved against it.

By the contract with the state the duty is imposed upon the construction company to organize the operating company for the purposes, among others, of taking over, operating and maintaining the system and "levying and collecting tolls, charges and assessments" and for such purposes. Such levies were to be made upon all "issued" stock, and "issued" stock is stock after its issuance to [fol. 443] settlers purchasing water rights. The sale of the water right and the issuance of the stock operated to dedicate the water right and make it appurtenant to the subdivision of land for which it was sold. And plainly no transfer of the stock thereafter by the purchaser, whether to the promoting company or to the trustees, or to some other person, could change this status; it continued to be issued stock, subject to its ratable part of the burden of maintaining and operating the system.

In the settler's contract, the description of that which was sold not only covers the water, but specifically the number of shares of stock in the operating company, together with the form and number of the certificate. In this contract the power of the construction company to control the operating company and to vote its stock is recognized, for in paragraph 2 it is stated that "so long as it retains control of the" operating company, that is, so long as it shall continue to vote a majority of the stock of that company "as provided in the state contract" it will cause it to maintain the system in good order. Then follows the express general provision that the operating company is to have power to levy all necessary tolls, charges and assessments, whether water is or is not used by the stockholder. [fol. 444] The settler agrees that upon default in the payment of any installment on the purchase price, or of the interest thereon, "or any annual charge, toll or assessment for the operation and maintenance of the irrigation system," the construction company might declare the entire

purchase price due and payable and could enforce its lien not only upon the water right but upon the land to which the water right is dedicated.

The settler is further made to agree that no water is to be delivered to him, not only while any installment of the purchase price is in default but "while any toll or assessment is due and unpaid" to the operating company. And finally it is agreed that the contract may be assigned by the company, whereupon the payment of principal and interest shall be due and payable to the assignee," but the payments for tolls, assessments and charges for the delivery of water shall "be paid to the operating company, and payment thereof may be enforced by it."

Similarly, and perhaps even more elaborately, the by-laws disclose the understanding that it would be the right and the duty of the operating company to levy and collect against the stock, assessments to meet the necessary expenses of maintenance and operation.

[fol. 415] In Section 6 of Article I, covering the subject of the stockholders' right to vote, it is provided that no stockholder shall have any right to vote until all assessments levied against his stock have been paid. Section 1 of Article V, covering the subject of the relation of the water to the land, provides that each certificate of stock issued shall contain a description of the lands to be irrigated, and that the shares and water rights evidenced thereby shall forever be dedicated and inseparably appurtenant to the land, unless the same shall become forfeited through a failure of the owner or holder thereof to pay assessments against such stock or for the use of water thereunder from the canal, or shall be forfeited or sold by operation of law. Section 5 of Article V, insofar as it is relevant, is as follows:

"For the purpose of defraying the expenses of the company of whatsoever kind and paying the cost for maintaining, managing and operating said canal system, the board of directors of the Company are authorized and directed to levy such tax or taxes, charge or charges, assessment or assessments, as in the judgment of said board may appear necessary or proper to raise the money or revenue required. All such expenses, taxes, costs and charges to be apportioned among all the stock issued by the company,

which has been applied and made appurtenant to land, but no such assessment or tax shall be levied against shares which have been issued to or are held for the benefit or in the interest of the Portneuf-Marsh Valley Irrigation Com- [fol. 446] pany, Limited, and which has not been sold or made appurtenant to land.

"The taxes or assessments herein provided for, shall be levied against the owners of the shares of stock applied or made appurtenant to land, regardless of whether water has been used for irrigation purposes by the holder of said stock."

Section 7 of Article V expressly provides that the surplus stock, that is, stock representing water rights which the promoting company has never sold shall for all purposes be regarded as unissued stock, and that such stock "shall have no voting power and shall not be subject to any tax, assessment or charge."

The provision and the only provision upon which the plaintiffs place any reliance is Section 8 of Article V, which is as follows:

"All shares in this corporation shall be held subject to the rights of The Portneuf-Marsh Valley Irrigation Company, Limited, until the amount due such company, its successors or assigns, shall have been fully and finally paid, as provided in the contract between said corporation and the purchaser of shares and as provided in the contract between the said Portneuf-Marsh Valley Irrigation Company, Limited, and the State of Idaho."

But plainly this provision creates no new right in the construction company, or obligation on the part of the operating company. "All shares * * * shall be [fol. 447] held"—by whom? The unissued shares, by the operating company, and they were to be held for the construction company, to be issued to purchasers of water as provided in the state contract. Touching them there are no controversies. And the issued shares, they were not held by the operating company at all; they were outstanding and were held by the several purchasers of water rights and they were to be held by them, subject to the rights of the construction company as such rights were defined by

the water contracts and the State contract, that is, the right of a lien as so defined, the right of the construction company to assign as in pledge, as provided in the contracts, and the right to vote under certain conditions as provided in those contracts, and possibly other rights. It would be strange indeed that, if, when it was preparing these by-laws, the construction company had in mind such an important matter as the subordination of the right to collect assessments, which it knew were indispensible to the very preservation of its security, it would have been content to express such intent in the vague, general terms of this section, while at the same time, in the next preceeding section it so clearly and fully expressed the understanding that the unissued stock was not subject to assessments. And, when we consider at large the relation of the parties one to the other, the general purposes to be subserved and even the [fol. 448] intelligent self interest of the promoting company, it is inconceivable that, at the time when these transactions were being carried on and the contracts and by-laws formulated, anyone could have regarded the lien of the construction company as anything more than a first mortgage upon the stock and land to which the water right is appurtenant. All it could have thought of getting or retaining was a lien of that dignity. Such an understanding is clearly disclosed in the settler's contract itself, where it is provided that upon acquiring the legal title to the land embraced in his entry the settler would execute, in proper form, a mortgage which should be a first lien upon the land so mortgaged. But the lien of a mortgage or of a pledgee on stock in an irrigation company or other corporation is not superior to taxes upon such property, or of assessments upon it levied for the purpose of meeting necessary expenses of maintenance and operation. To protect himself such lienholder must see that the tax or assessment is paid. When we consider that in the first place it was necessary for the construction company to maintain this system, and when it turned it over to its creature, the operating company, it was necessary for that company to maintain it, and for the very preservation of the security it was necessary to levy assessments upon the stock, it is incredible that anyone could have understood these provi- [fol. 449] sions or any of them as expressing or implying an understanding that such claims for preservation and opera-

tion were to be subordinated to the construction company's lien, or that the operating company would have accepted the trust upon such a condition. And, as already suggested, if the language of the instruments, taken as a whole, is of doubtful meaning, under familiar principles the doubt must be resolved against the construction company and hence against the plaintiffs.

Plaintiffs also refer to provisions of later instruments—an agreement by which a general controversy was settled the deed of the system to the operating company and a new settler's contract—all formulated in 1915—but the language in them is substantially identical with that of the by-laws. They also seek to strengthen their case by the assumption that the state contract exempts unsold and unissued stock from assessment, but the assumption seems to be an inadvertence for I find no such provision in that contract.

Alleged Invalidity of Assessments

A full discussion of the several contentions urged by the plaintiffs under this heading would extend the opinion to an unreasonable length, and they may be briefly disposed of:

The first point is that the assessments are invalid because of the words "Fully Paid and Non-Assessable", forming [fol. 450] a part of the decorative border of the stock certificates. But does not such a view necessarily imply bad faith and duplicity upon the part of the construction company? The basic contract—the one between it and the state—expressly authorizes assessments on the stock. Its contracts with the settlers, in which there is set forth the form of the stock certificate, expressly authorizes assessments. The by-laws, prepared and in effect adopted by it, expressly and elaborately provide for assessments. Are we to conclude that this marginal phrase was inserted as a "joker"? The more reasonable view, and one entirely consistent with the theory of the good faith of all parties concerned, is that the phrase was intended to refer to assessments in the nature of calls: 6 Cyc. 265; 10 Id. 484. The stock is fully paid, and hence is non-assessable—that is, it is not subject to "call" assessments for the purchase price; such is the meaning. This explanation finds cor-ob-

ration in the resolutions adopted in 1908 at the first meeting of the board of directors—who, it may be added, were at the same time the directors of the construction company. There was a technical problem to meet: the settler was to get his water right for $35.00 per acre, the manner of paying for all of which is provided for in the water contract. And he was also to receive stock, the par value of which was $1.00 per share. How was this $1.00 to be paid? He [fol. 451] was not to pay it in addition to the $35.00 per acre; hence, when he received his certificate of stock it bore upon its face the assurance, in the words under consideration, that the stock was paid up and he would not be subject to "call" assessments. Plaintiffs themselves appreciate the necessity of qualifying the general import of the word "non-assessable", and accordingly suggest that it should be construed as denying the power to levy "statutory assessments", but not "charges in the nature of tolls". But not only is there no intimation in the phraseology, either of the stock certificates or any of the other writings, of such an intention, but the theory is wholly inconsistent with the provisions of the by-laws, where (Section 6, Article V) "statutory assessments" are expressly authorized. There is nothing in the suggestion, touching this point, that the plaintiffs have a right superior to that of the construction company. They and their predecessors have always had full knowledge of the written instruments and their provisions. On the general subject, see Hall v. Eagle Rock & Willow Creek Water Co., 5 Ida. 551, 51 Pac. 110.

As to the temporary suspension of the charter of the operating company, it will be noted that in fact it was not subject to the license tax which it failed to pay. But if, under the peculiar statutory provision, we regard the suspension as valid because of the inadvertant failure to make [fol. 452] a report as required, it is still true that under the statute, upon such suspension, the board of directors become trustees to preserve and care for the property of the corporation, and as such it was not only the right of the directors here acting as such trustees but their duty, to incur such expenses are were necessary for the proper performance of these obligations. The assessments in question simply represent such necessary expenses, and are to be regarded as an equitable charge upon the property, superior to other liens. The charges are such as receivers

might and should incur as expenses of the receivership, with the right on their part to be reimbursed ahead of all other claimants, whether secured or unsecured.

As to this point, therefore, as well as other points which I shall not particularly discuss, it is thought that plaintiffs must fail for one or both of two considerations:

1. Section 4749 of the Idaho Compiled Statutes provides that:

"No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity in the assessment, irregularity or defect in the notice of sale or in its publication, or defect or irregularity in the sale unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with [fol. 453] all subsequent assessments which may have been paid or may be due thereon, and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced within six months after such sale was made."

2. Plaintiffs are here seeking equitable relief; they must do equity. The defendant, operation company, does not claim absolute or indefeasible title to the stock sold for delinquency. It is willing to recognize the original holders, or their successors in interest, as the present owners if they will pay what is equitably due upon the stock, ratably with other stockholders. For the amounts so claimed the defendant has an equitable lien, of which it cannot be justly deprived. It has preserved the property in which the plaintiffs and the construction company have a large beneficial interest, and they ought not by a court of equity to be aided in escaping their fair proportion of the expense incident to such preservation. In many cases, as we have seen, plaintiffs and the construction company have for some time not only had title to the issued stock, and the water rights it represents, but also to the lands to which the water rights are appurtenant, with such improvements as were placed thereon by the settlers, and now to relieve them from the burden necessarily incurred in preserving their property would be against good conscience. Hall v. Eagle Rock & Willow Creek Water Co., supra.

[fol. 454] Accordingly the holding will be against the plaintiffs upon these issues. The briefs go no further. The cause was tried rapidly, and, considerable time having elapsed since the trial, I shall have to ask counsel for further assistance touching subordinate matters, concerning which there is apparently little or no controversy, but which will have to be reduced to form and defined before a decree can be entered. For this purpose it is possible that a transcript of the evidence will have to be gotten out, unless counsel, by reason of their familiarity with the facts, can, with the exhibits before them, work out results upon which they can agree.

We must find:

1. The amount of principal unpaid on the bonds.

2. The date to which the interest has been paid thereon, and the present amount of accrued interest.

3. Disbursements, if any, made by the trustees under the terms of the deed, for which they are entitled to reimbursement.

4. Credits, if any, applicable to a reduction of the indebtedness.

5. Trustee's compensation.

6. Attorney fees.

[fol. 455] (I do not recall whether these last two matters were stipulated or not.)

7. There must also be a clear description in the decree of the property to be sold, with special reference to the question of what (a) the purchaser will get, and (b) what the operating company will have left.

(My impression is that a clear definition of the interrelated rights and interests of the operating company and the purchaser will involve some difficulty and should have most careful consideration, and possibly will have to be the subject of a further conference between court and counsel.)

8. Other matters possibly which do not presently occur to me.

I would suggest that as a preliminary step counsel for the plaintiffs give attention to the preparation of a proposed decree, covering the points above noted, and attach to it a memorandum explaining his mode of reaching the several amounts where computations or money items are involved.

[fol. 456] In United States District Court

Stipulation re Decree—Filed June 25, 1924

It is hereby stipulated and agreed by and between the plaintiff and defendants as follows:

That they hereby consent that the Decree entered herein shall not provide for the sale upon foreclosure of the property, rights and franchises comprising the irrigation system referred to in complainants complaint, but that instead and in lieu thereof, there shall be sold the shares of stock in the Portneuf-Marsh Valley Canal Company, Ltd., representing proportionate interests in said irrigation system.

The parties hereto further consent and agree that the amounts decreed as liens upon the separate parcels of stock in paragraph six of the decree herein, although larger than the amount claimed in the answer of defendant Portneuf Marsh Valley Canal Company, are correct and include assessments up to the date of the Decree; that is to say, said sums include the assessment levied by said Portneuf Marsh Valley Canal Company in the spring of 1924, and complainant admits that, while no evidence appears in the record as to such assessments, that such assessments were levied and proceedings had thereon in the same general manner and with the same general effect as those assessments of which evidence was introduced and the said assess-
[fol. 457] ments were levied under the same conditions and for the same purposes as the other assessments.

This Stipulation is not intended on the part of any party hereto to waive any rights in this cause save and except as are herein particularly enumerated.

Edwin Snow, Attorney for Complainant. D. C. McDougall, Attorney for Defendant Portneuf Marsh Valley Canal Company, Limited. H. S. MacMartin, Attorney for Defendant Portneuf-Marsh Valley Irrigation Company, Limited.

In United States District Court

Decree—Filed June 26, 1924

This cause coming on to be heard before the Court at Pocatello, Idaho, evidence was received and it was argued [fol. 458] by counsel and thereupon consideration thereof, it is ordered, adjudged and decreed as follows, to-wit:

I

That the mortgage or deed of trust made by defendant Portneuf Marsh Valley Irrigation Company, Limited, to the Colonial Trust & Savings Bank and L. C. Rose, Trustees, dated July 1st, 1909, recorded in Book 11 of Mortgages at page 528 in the office of the County Recorder of Bannock County, Idaho, which said mortgage or deed of trust is sought to be foreclosed in this action, is a valid, first and paramount lien (subject only to the rights of the defendant Portneuf Marsh Valley Canal Company, Limited, as hereinafter more particularly set out) and secures the payment of the sums hereinafter found to be due. Said lien is binding upon the property described in said mortgage or trust deed as follows, to-wit:

(a) Beginning at the Southeast corner of Lot Two (2), of Section Twenty-four (24), Township Six (6) south, Range Thirty-eight (38) East of the Boise Meridian, and running thence West along the center line of said section one thousand two hundred and nine-tenths (1,200.9) feet more or less to the East One sixteenth (1-16) section line of said section; thence North along said one-sixteenth (1-16) section line one thousand three hundred seventeen and eight tenths (1,317.8) feet, more or less, to the North [fol. 459] one-sixteenth (1-16) section line of said section; thence East along the said North one-sixteenth (1-16) section line one hundred seventy-five (175) feet; thence Southeasterly on a straight line one thousand six hundred seventy-five and eight tenths (1,675.8) feet more or less to the place of beginning, containing twenty (20) acres, more or less;

Also Lot Three (3) of Section Twenty-four (24), Township Six (6) South, Range Thirty-eight (38) East of the

Boise Meridian, containing Thirty-three and two-tenths (33.2) acres;

2. That certain lot, piece or parcel of land described as follows:

The West Half (½) of the Northeast Quarter (¼); and the Northwest Quarter (¼) of the South-east Quarter (¼) of Section Twenty-four (24) and the Southwest Quarter (¼) of the Southeast Quarter (¼) of Section Thirteen (13), Township Six (6) South, Range Thirty-eight (38) East, Boise Meridian, containing One Hundred Sixty (160) acres, according to the official plat of the survey of said lands returned to the General Land Office by the Surveyor General;

3. That certain lot, piece or parcel of land described as follows:

[fol. 460] Beginning at the S. E. corner of Sec. Twenty-four (24), Township Six (6) South, Range Thirty-eight (38) East of the Boise Meridian, thence North Thirty-eight (38) degrees seventeen (17) minutes East one thousand six hundred seventy-eight and eight-tenths (1,678.8) feet, more or less, to the South one-sixteenth (1-16) Section line of Section Nineteen (19), Township Six (6) South, Range Thirty-nine (39) East of the Boise Meridian, thence North Thirty-eight degrees seventeen (17) minutes West one thousand six hundred seventy-eight and eight-tenths (1,678.8) feet, more or less, to the East Quarter (¼) corner of Section Twenty-four (24), Township Six (6) South, Range Thirty-eight (38) East of the Boise Meridian, thence South along East line of Section Twenty-four (24) aforesaid, two thousand six hundred thirty-five and five-tenths (2,635.5) feet more or less, to the place of beginning, and containing Thirty-one (31) acres, more or less, said land being a portion of the West Half (½) of the Southwest Quarter (¼) of Section Nineteen (19) Township Six (6), South, Range Thirty-nine (39) East of the Boise Meridian;

Also all real and personal property of the Company including water rights, ditches, canals, laterals, rights of way, easements, incomes and choses in action whether now owned or hereafter acquired, and particularly the line of

principal canal as projected or constructed by the Company [fol. 461] beginning at a point on the South bank of the Portneuf River in Lot 7, Sec. 22 9 37, which point bears N. 34 degrees 40 minutes East 3,040 feet from the S. W. corner Sec. 22 9 37, thence in a south and westerly direction a distance of 910 feet across said Lot 7; thence in a westerly direction 1,440 feet across lot 8, Sec. 22 where the canal crosses the section line between Sections 21 and 22 a distance of 1,735 feet north of the S. W. corner of Section 22.

Thence in a Northwesterly direction 1,400 feet across Lot 9, 400 across Lot 8, 1,430 across Lot 7, thence in a Westerly direction 2,200 feet across Lot 5; thence in a Southwesterly direction 2,345 feet across Lot 6, all in Sec. 21, where the canal crosses the section line between Sections 20 and 21 a distance of 2,610 feet north of the S. W. corner of Section 21;

Thence in a Southwesterly direction 380 feet across the N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ 1,005 feet across Lot 5, 2,410 feet across Lot 6, 1,630 feet across Lot 7, 2,010 feet across the S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ and 890 feet across S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ all in Section 20, where the canal crosses the Section line between section 20 and 29, a distance of 870 feet East of the S. W. corner Sec. 20;

Thence in a Southwesterly direction 1,110 feet across the N. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ Sec. 29, where the line crosses the section line between sections 29 and 30, a distance of [fol. 462] 315 feet South of the N. W. corner of Section 29, thence in a Southwesterly direction 3,660 feet across the N. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$, 1,120 feet across the N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, thence in a Southerly direction 1,550 feet across the S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, 3,370 feet across the E. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$, all in Section 30 where the canal crosses the section line between Section 30 and 31 at a distance of 1,240 feet west of the S. E. corner of the S. W. $\frac{1}{4}$ of Section 30;

Thence 550 feet across Lot 1, 2,080 feet across the N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, 1,030 feet across the S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, 1,070 feet across the N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, 4,590 across N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and 2,080 feet across the S. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ all in Sec. 31 9 37, where the line crosses the Township line between section 31 9 37 and Section 6 10 37, at a distance of 195 feet east of the N. E. corner and Section 6 10 37.

Thence in a Southerly direction 1,000 feet across Lot 4, thence 2,810 feet across the S. W. ¼ of the N. W. ¼, 1,500 feet across the N. E. ¼ of the S. W. ¼, 500 feet across the N. W. ¼ of S. W. ¼, 1,840 feet across the S. E. ¼ of S. W. ¼ all in Sec. 5-10-37, where the line crosses the section line between sections 5 and 8, at a distance of 10 feet East of S. E. corner of S. W. ¼, Sec. 5-10-37;

Thence in a Southerly direction 3,120 feet across the W. ½ of N. E. ¼, 2,710 feet across the W. ½ of S. E. ¼, all in Sec. 8-10-37, where the canal crosses the Section line [fol. 463] between Sec. 8 and 17, at a distance of 1,630 feet west of the N. E. corner of Section 17-10-37;

Thence in a Southerly direction 890 feet across the N. W. ¼ of the N. E. ¼, 430 feet across the N. E. ¼ of the N. E. ¼, 1040 feet across the S. E. ¼ of the N. E. ¼, 2930 feet across the E. ½ of S. E. ¼, all in Sec. 17-10-37, where it crosses the section line between Sections 17 and 20, at a distance of 1940 feet west of the N. E. corner, Section 20-10-37;

Thence in a southerly direction 1240 feet across the N. E. ¼ of the N. E. ¼, 450 feet across the S. E. ¼ of the N. E. ¼, 1520 feet across the S. W. ¼ of the N. E. ¼, and 3840 feet across the W. ½ of S. E. ¼, all in section 20 where the canal crosses the section line between sections 20 and 29, at a distance of 535 feet East of the S. W. corner of the S. E. ¼ of Section 20-10-37;

Thence in an Easterly direction 700 feet across the N. W. ¼ of the N. E. ¼ of Section 29 where it crosses the section line 1120 feet East of the S. W. corner of S. E. ¼, Section 20-10-37;

Thence in a Northeasterly direction 240 feet across the S. W. ¼ of the S. E. ¼, and 360 feet in a southeasterly direction across the S. E. ¼ of the S. E. ¼, Sec. 20-10-37 where it crosses the Section line 1080 feet west of the S. E. corner, Sec. 20-10-37;

[fol. 464] Thence in a southerly direction 3650 feet across the E. ½ of the N. E. ¼, 700 feet across the S. W. ¼ of N. E. ¼, 1150 feet across the N. W. ¼ of the S. E. ¼, 2500 feet across the N. E. ¼ of the S. E. ¼, and 1330 feet across the S. W. ¼ of the S. E. ¼, all in Section 29-10-37, where the canal crosses the section line between sections 29 and 30, at a distance of 1455 feet west of the S. E. corner Section 29-10-37;

Thence in a Southerly direction 1080 feet across the N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$, in a southeasterly direction 770 feet across the N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ in a Southerly direction; 1760 — across the S. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ in a Southeasterly direction 3050 feet across the E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, all in Sec. 32-10-37, where it crosses the section line between sections 32 and 33, 550 feet North of the S. E. corner Section 32-10-37, thence in a Southerly direction 780 feet across the S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ Sec. 33-10-37, where the canal crosses the township line between sections 33-10-37, and Sections 4-11-37 at a distance of 60 feet east of the N. W. corner of Section 4-11-37;

Thence in a Southerly direction 1530 feet across Lot 4, thence 1050 feet across the S. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$, Sec. 5, where the canal crosses the section line between Sections 4 and 5 at a distance of 640 feet north of the S. W. corner of the N. W. $\frac{1}{4}$, Section 4-11-37;

[fol. 465] Thence in an Easterly direction 2000 feet across the S. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$, thence in a Southerly direction 2060 feet across the East Half of the S. W. $\frac{1}{4}$, thence in a Southwesterly direction 820 feet across the S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$, all in Section 4-11-37, where the canal crosses the section line between Section 4 and 9 at a distance of 845 feet East of the S. W. corner of Section 4-11-37;

Thence in a Southerly direction 3160 feet across the W. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$, in a Southeasterly direction 2980 feet across the N. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$, 1310 feet across the S. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ and 790 feet in a Southwesterly direction across the S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ all in Sec. 9-11-37, where the canal crosses the Section line between Sections 9 and 16, at a distance of 630 feet west of the S. E. corner of the S. W. $\frac{1}{4}$, Section 9-11-37;

Thence in a Southeasterly direction 2110 feet across the E. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$, 3060 feet across the S. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$ and 4270 feet across the E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, all in Sec. 16-11-37, where the canal crosses the section line between Sections 16 and 15 and 15 and 22, at a distance of 5 feet East of the S. E. corner of Section 16-11-37;

Thence in a Southeasterly direction 1910 feet across the W. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$, 1670 feet across the S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, 2220 feet across the E. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$, and [fol. 466] 980 feet across the S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of the

S. E. ¼ all in Section 22 11-37, where the canal crosses the section line between Sections 22 and 27 at a distance of 675 feet east of the S. W. corner of the S. E. ¼, Section 22 11-37;

Thence in a Southerly direction 2930 feet across the W. ½ of the N. E. ¼ and 2760 feet across the W. ½ of the S. E. ¼ of Section 27 11-37; where the canal crosses the Section line between sections 27 and 34 at a distance of 365 feet each from the S. W. corner of the S. E. ¼ Section 27 11-37;

Also all rights, grants, interests, privileges, easements and franchises acquired by the Company under the contract of H. O. Harkness and others with the State Board of Land Commissioners of the State of Idaho, which, with the consent of said Board has been duly assigned to this Company, dated June 3, 1908, and under that certain contract, dated May 14, 1908, between the State of Idaho and the United States of America segregating the lands referred to herein, and under any other contracts which may be executed by this Company and the State Board of Land Commissioners relating to the irrigation of lands which may be segregated by the United States of America for that purpose.

Also all waters, water rights, and appropriations of [fol. 467] water, whether presently owned by the Company or hereafter acquired by it, and all rights of way; and also all dams, reservoirs, canals, ditches, laterals, headgates and flumes; and the entire irrigation system of the Company, now owned by the Company or which it may hereafter acquire or construct and wheresoever situate in said State of Idaho, and all tools, supplies, horses, mules, wagons and all commissary stores and construction machinery of the Company wheresoever situate.

Also all notes, contracts, or other evidences of indebtedness owing to said grantor and all money now deposited in escrow with the Idaho State Board of Land Commissioners or with the Treasurer of the State of Idaho, at Boise City, Idaho, whereof the Company is now the owner; and the Company does hereby agree to notify the said Idaho State Board of Land Commissioners or said State Treasurer to hold the said notes and money for the Trustees and to deliver the same when released by the said Board to the Trustee to be held under the terms of this mortgage. Also such

water contracts and notes secured by mortgage or trust deed and such bills receivable owing to the Company and money now owned or hereinafter acquired and such personal property of whatsoever nature or description now owned or hereafter acquired by the Company as have been lodged with the Trustees under the provisions hereof.

[fol. 468] (b) Also all the right, title and interest originally held by said defendant Portneuf-Marsh Valley Irrigation Company, Limited, in and to the following described shares of stock in the Portneuf-Marsh Valley Canal Company, Limited, and contracts heretofore made by said Portneuf-Marsh Valley Irrigation Company, Limited, for the sale to land owners of water rights or shares in said irrigation system and constituting, to the extent of the unpaid portion of the purchase price of said water rights, first liens (subject to the rights of the defendant Portneuf-Marsh Valley Canal Company, Limited, as hereinafter set out) on the land irrigated thereunder and heretofore deposited with the complainants and assigned by the defendant Portneuf-Marsh Valley Irrigation Company, Limited, to the complainants, being the tracts below enumerated, there being specified in this decree the respective dates, numbers, names of the several contracting purchasers, number of shares of stock and certificate therefor, description of lands covered and unpaid balances of principal, to wit:

March 13, 1915, Cont. No. 1, Heriot Riddle, Cert. No. 1, 80 Shares, E. ½ S. E. ¼, Sec. 28, Twp. 11 S., R. 37 E. B. M.	$770 25
April 1, 1915, Cont. No. 3, J. E. Yoxall, Cert. No. 3, 40 Shares, S. E. ¼ N. W. ¼, Sec. 7, Twp. 11 S., R. 37 S. B. M.	2,250 68
March 30, 1915, Cont. No. 4, F. C. Knight, Cert. No. 4, 80 Shares, W. ½ S. E. ¼, Sec. 28, Twp. 11 S., R. 37 E. B. M.	1,376 40
[fol. 469] March 31, 1915, Cont. No. 7, A. M. Susong, Cert. No. 7, 80 Shares, S. ½ S. W. ¼, Sec. 21, Twp. 11 S., R. 37 E. B. M.	2,690 40
April 1, 1915, Cont. No. 9, Mary C. Card, Cert. No. 9, 80 Shares, N. E. ¼ S. W. ¼ and N. W. ¼ S. E. ¼, Sec. 7, Twp. 11 S., R. 37 E. B. M.	769 68

April 10, 1915, Cont. No. 10, Jos Murphy, Cert. No. 10, 80 Shares, N. W. ¼ S. W. ¼, Sec. 28, Twp. 11 S., R. 37 East, and N. E. ¼ S. E. ¼ Sec. 29, Twp. 11 S., R. 37 E. B. M. 1,546 50

March 18, 1915, Cont. No. 11, O. A. Smith, Cert. No. 11, 80 Shares, W. ½ N. E. ¼, Sec. 33, Twp. 11 S., R. 37 E. B. M. 3,801 30

April 20, 1915, Cont. No. 14, H. M. Tibbitts, Cert. No. 14, 80 Shares, S. W. ¼ N. E. ¼ and N. W. ¼ S. E. ¼, Sec. 29, Twp. 11 S., R. 37 E. B. M. 3,140 60

March 30, 1915, Cont. No. 20, Wesley K. Walton, Cert. No. 20, 40 Shares, N. W. ¼ N. E. ¼, Sec. 29, Twp. 11 S., R. 37 E. B. M. 2,067 47

May 20, 1915, Cont. No. 24, H. M. Tibbitts, Cert. No. 24, 80 Shares, E. ½ S. W. ¼, Sec. 29, Twp. 11 S., R. 37 E. B. M. 3,149 88

March 15, 1914, Cont. No. 32, Anton K. Dahlen, Cert. No. 32, 40 Shares, S. W. ¼ S. W. ¼, Sec. 32, Twp. 10 S., R. 37 E. B. M. 1,373 20

March 17, 1915, Cont. No. 34, C. N. Ray, Cert. No. 34, 80 Shares E. ½ N. E. ¼, Sec. 12, Twp. 11 S., R. 36 E. B. M. 1,169 52

September 7, 1908, Cont. No. 35, D. E. Kent, Cert. No. 35, 80 Shares, E. ½ S. E. ¼, Sec. 32, Twp. 11 S., R. 37 E. B. M. 3,962 40

March 11, 1915, Cont. No. 36, W. I. Layton, Cert. No. 36, 80 Shares, E. ½ N. E. ¼, Sec. 20, Twp. 11 S., R. 37 E. B. M. 1,031 60

[fol. 470] April 3, 1915, Cont. No. 28, A. G. Tregaanza, Cert. No. 28, 40 Shares S. E. ¼ S. E. ¼, Sec. 17, Twp. 11 S., R. 37 E. B. M. 933 66

November 24, 1915, Cont. No. 40, Robert L. Van Eaton, Cert. No. 40, 40 Shares, N. W. ¼ S. E. ¼, Sec. 17, Twp. 11 S., R. 37 E. B. M. 2,018 14

April 20, 1915, Cont. No. 41, Anna R. Todd Cert. No. 41, 80 Shares, N. W. ¼ S. W. ¼ and S. W. ¼ N. W. ¼, Sec. 32, Twp. 10 S., R. 37 E. B. M. 2,477 83

March 24, 1915, Cont. No. 42, Vinnie R. Walling, Cert. No. 42, 80 Shares, N. ½ N. W. ¼, Sec. 29, Twp. 11 S., R. 37 E. B. M. 2,476 31

March 17, 1915, Cont. No. 43, T. W. Monell, (Edward C. Widmann, assignee) Cert. No. 43, 40 Shares, N. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$, Sec. 32, Twp. 11 S., R. 37 E. B. M. 1,395 00

March, 1915, Cont. No. 45, Harry C. Taylor, Cert. No. 45, 80 Shares, S. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$ Sec. 17, and N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$, Sec. 20, Twp. 11 S., R. 37 E. B. M. 2,252 00

March 17, 1915, Cont. No. 46, E. G. Widmann, Cert. No. 46, 80 Shares, E. $\frac{1}{2}$ S. E. $\frac{1}{4}$ Sec. 30, Twp. 11 S., R. 37 E. B. M. 929 16

March 17, 1915, Cont. No. 47, T. W. Monell, (Assignee) Cert. No. 47, 40 Shares, S. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$, Sec. 32, Twp. 11 S., R. 37 E. B. M.

March 17, 1915, Cont. No. 49, E. G. Widmann, Cert. No. 49, 80 Shares, E. $\frac{1}{2}$ N. E. $\frac{1}{4}$, Sec. 31, Twp. 11 S., R. 37 E. B. M. 929 16

April 1, 1915, Cont. No. 51, Fred L. Olmstead, Cert. No. 51, 80 Shares, E. $\frac{1}{2}$ N. W. $\frac{1}{4}$, Sec. 20, Twp. 11 S., R. 37 E. B. M. 1,672 88

March, 1915, Cont. No. 52, T. C. Lawler, Cert. No. 52, 80 Shares, E. $\frac{1}{2}$ S. E. $\frac{1}{4}$, Sec. 19, Twp. 11 S., R. 37 E. B. M. 2,485 84

[fol. 471] September 7, 1908, Cont. No. 55, E. E. Gillispie (assignee), Cert. No. 55, 80 Shares, W. $\frac{1}{2}$ N. W. $\frac{1}{4}$, Sec. 20 Twp. 11 S., R. 37 E. B. M. 3,293 10

June 25, 1915, Cont. No. 56, F. W. Benninger, (Assignee), Cert. No. 56, 80 Shares, E. $\frac{1}{2}$ N. E. $\frac{1}{4}$, Sec. 24, Twp. 11 S., R. 36 E. B. M. 1,014 90

April 1, 1913, Cont. No. 57, Ben S. Crow, Cert. No. 57, 80 Shares, N. $\frac{1}{2}$ N. W. $\frac{1}{4}$, Sec. 8, Twp. 11 S., R. 37 E. B. M. 1,386 56

March 26, 1915, Cont. No. 60, Chas. Webber, Cert. No. 60, 40 Shares, S. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$, Sec. 19, Twp. 11 S., R. 37 E. B. M. 535 52

September 7, 1908, Cont. No. 61, Chaney Sessions, Cert. No. 61, 39.81 Shares, Lot 1, Sec. 3, Twp. 12 S., R. 37 E. B. M.

April 26, 1915, Cont. No. 65, Sophia C. Roberts, Cert. No. 65, 40 Shares, N. E. $\frac{1}{4}$ S. W. $\frac{1}{4}$, Sec. 19, Twp. 11 S., R. 37 E. B. M. 620 44

April 1, 1915, Cont. No. 66, F. J. Card, (Assigned Chas. R. John) ½ Cert. No. 66, 40 Shares, E. ½ S. W. ¼, Sec. 13, Twp. 11 S., R. 36 E. B. M. 1,346 40

February 3, 1914, Cont. No. 67, C. H. Overton, Cert. No. 67, 80 Shares, E. ½ N. W. ¼, Sec. 13, Twp. 11 S., R. 36 E. B. M. 3,812 32

March 8, 1915, Cont. No. 69, J. W. Alldred, Cert. No. 69, 80 Shares N. W. ¼ S. W. ¼ and S. W. ¼ N. W. ¼, Sec. 13, Twp. 11 S., R. 37 E. B. M. 3,816 48

March 4, 1915, Cont. No. 71, Thos. R. Bennett, Cert. No. 71, 80 Shares, S. E. ¼ N. W. ¼ and S. W. ¼ N. E. ¼, Sec. 32, Twp. 10 S., R. 37 E. B. M. 662 61

April 12, 1915, Cont. No. 72, Dean Vincent, Cert. No. 72, 40 Shares, S. W. ¼ S. E. ¼, Sec. 5, Twp. 11 S., R. 37 E. B. M. 385 86

[fol. 472] March 4, 1915, Cont. No. 73, Harland A. Valentine, (J. H. Hartvigsen) Cert. No. 73, 40 Shares, N. E. ¼ N. W. ¼, Sec. 21, Twp. 11 S., R. 37 E. B. M. 1,584 00

March 22, 1915, Cont. No. 75, D. C. Olmstead, Cert. No. 75, 52.76 Shares, Lot 3, Sec. 19, Twp. 11 S., R. 37 E. B. M. 508 47

March, 1915, Cont. No. 76, N. J. Hartvigsen, Cert. No. 76, 40 Shares, S. E. ¼ S. E. ¼, Sec. 33, Twp. 11 S., R. 37 E. B. M. 466 83

March 28, 1915, Cont. No. 80, Mary F. Zoerb, Cert. No. 80, 80 Shares, S. ½ N. E. ¼, Sec. 18, Twp. 11 S., R. 37 E. B. M. 1,203 72

March 27, 1919, Cont. No. 81, W. F. Kasiska, Cert. No. 81, 80 Shares, N. ½ S. E. ¼ Sec. 18, Twp. 11 S., R. 37 E. B. M. 1,643 80

March 10, 1915, Cont. No. 85, Anna Kelly, Cert. No. 85, 80 Shares, N. W. ¼ N. E. ¼ and N. E. ¼ N. W. ¼, Sec. 17, Twp. 11 S., R. 37, E. B. M. 985 26

October 25, 1915, Cont. No. 86, W. C. Morley, Cert. No. 86, 40 Shares, N. E. ¼ S. E. ¼, Sec. 17, Twp. 11 S., R. 37 E. B. M 465 33

November 1, 1915, Cont. No. 90, G. E. Tripp, Cert. No. 90, 40 Shares, N. W. ¼ N. E. ¼, Sec. 20, Twp. 10 S., R. 37 E. B. M. 1,531 20

March 37, 1915, Cont. No. 96, N. S. Pond, Cert. No. 96, 80 Shares, S. W. ¼ S. W. ¼, Sec. 8, and N. W. ¼ N. W. ¼, Sec. 17, Twp. 11 S., R. 37 E. B. M. 1,350 44

April 5, 1915, Cont. No. 98, L. W. Woodin, Cert. No. 98, 40 Shares, N. E. ¼ S. E. ¼, Sec. 24, Twp. 11 S., R. 36 E. B. M. 466 83

March 17, 1915, Cont. No. 99, E. G. Widmann, Cert. No. 99, 120 Shares, N. W. ¼ S. W. ¼, Sec. 32, Twp. 11 S., R. 37 E. B. M.

March 26, 1915, Cont. No. 101, Emma Beckley, Cert. No. 101, 40 Shares, S. E. ¼ N. W. ¼, Sec. 19, Twp. 11 S., R. 37 E. B. M. 385 86

[fol. 473] August 7, 1909, Cont. No. 104, John H. Moyes, Cert. No. 104, 40 Shares, S. E. ¼ S. W. ¼, Sec. 32, Twp. 11 S., R. 37 E. B. M. 1,353 20

October 15, 1915, Cont. No. 105, H. V. Monell, Cert. No. 105, 80 Shares, E. ½ N. E. ¼, Sec. 17, Twp. 11 S., R. 37 E. B. M. 4,928 17

March 13, 1915, Cont. No. 109, O. W. Bishop, Cert. No. 109, 52.67 Shares, S. W. ¼ S. W. ¼, Sec. 18, Twp. 11 S., R. 37 E. B. M. 451 62

March 3, 1915, Cont. No. 110, T. W. Bennett, Cert. No. 110, 40 Shares, N. W. ¼ N. E. ¼, Sec. 32, Twp. 10 S., R. 37 E. B. M. 847 25

April 10, 1915, Cont. No. 111, Robert Dill, Cert. No. 111, 80 Shares, N. W. ¼ N. E. ¼, and N. E. ¼ N. W. ¼, Sec. 12, Twp. 11 S., R. 36 E. B. M. 880 14

April 1, 1915, Cont. No. 112, Fred L. Olmstead, Cert. No. 112, 40 Shares, S. E. ¼ S. W. ¼, Sec. 17, Twp. 11 S., R. 37 E. B. M. 671 20

March 4, 1915, Cont. No. 114, O. P. Merrill, (Assigned to Elmer T. Richards) Cert. No. 114, 40 Shares, S. W. ¼ N. E. ¼, Sec. 12, Twp. 11 S., R. 36 E. B. M. 2,375 34

March 27, 1915, Cont. No. 115, E. C. White, Cert. No. 115, 80 Shares, S. W. ¼ S. E. ¼, Sec. 30, Twp. 11 S., R. 37, and N. W. ¼ N. E. ¼, Sec. 31, Twp. 11 S., R. 37 E. B. M. 1,378 88

June 1, 1915, Cont. No. 116, Wm. M. Underwood, Cert. No. 116, 40 Shares, S. W. ¼ S. W. ¼, Sec. 34, Twp. 11 S., R. 37 E. B. M. 2,289 18

November 19, 1909, Cont. No. 118, E. E. Gillespie, Cert. No. 118, 40 Shares, N. E. ¼ N. E. ¼, Sec. 19, Twp. 11 S., R. 37 E. B. M. 1,644 52

(fol. 474) October 15, 1915, Cont. No. 119, H. V. Monell, Cert. No. 119, 80 Shares, S. W. ¼ N. E. ¼ and S. E. ¼ N. W. ¼, Sec. 17, Twp. 11 S., R. 37 E. B. M. 3,022 24

March 1, 1915, Cont. No. 121, L. D. Brown, Cert. No. 121, 80 Shares, E. ½ S. W. ¼, Sec. 30, Twp. 11 S., R. 37 E. B. M. 1,238 88

March 4, 1910, Cont. No. 123, Geo. A. Nixon, Cert. No. 123, 80 Shares, S. E. ¼ S. W. ¼ and S. W. ¼ S. E. ¼, Sec. 12, Twp. 11 S., R. 36 E. B. M. 2,776 76

March 4, 1915, Cont. No. 125, W. H. Coffin, Cert. No. 125, 52.60 Shares, Lot 3, Sec. 18, Twp. 11 S., R. 37 E. B. M. 785 84

March 27, 1915, Cont. No. 127, Albert S. Maxham, Cert. No. 127, 80 Shares, N. W. ¼ S. E. ¼ and N. E. ¼ S. W. ¼, Sec. 33, Twp. 11 S., R. 37 E. B. M. 2,702 40

March 22, 1916, Cont. No. 131, F. C. Knight Cert. No. 131, 80 Shares, N. W. ¼ N. W. ¼, Sec. 32, and S. W. ¼ S. W. ¼, Sec. 29, Twp. 10 S., R. 37 E. B. M.

May 26, 1910, Cont. No. 132, Robert H. Ingalls, Cert. No. 132, 80.11 Shares, E. ½ N. E. ¼, Sec. 1, Twp. 11 S., R. 36 E. B. M.

March 22, 1910, Cont. No. 133, Charles F. Ingalls, Cert. No. 133, 80 Shares, E. ½ S. E. ¼, Sec. 1, Twp. 11 S., R. 36 E. B. M.

April 10, 1915, Cont. No. 137, Robert Hill, Cert. No. 137, 53.40 Shares, Lot 6, Sec. 6, Twp. 11 S., R. 37 E. B. M. 1,188 48

April 2, 1910, Cont. No. 139, Thomas Coffin, Cert. No. 139, 80 Shares, S. E. ¼ N. E. ¼, and N. E. ¼ S. E. ¼, Sec. 28, Twp. 10 S., R. 37 E. B. M.

November 11, 1915, Cont. No. 140, John Anderson, Cert. No. 140, 40 Shares, S. W. ¼ N. W. ¼, Sec. 3, Twp. 12 S., R. 37 E. B. M. 1,353 20

(fol. 475) April 20, 1910, Cont. No. 141, O. M. Ingdahl, Cert. No. 141, 79.91 Shares, Lot 1, and S. E. ¼ N. E. ¼, Sec. 4, Twp. 12 S., R. 37 E. B. M. 3,079 12

April 6, 1910, Cont. No. 143, W. A. Webber, Cert. No. 143, 40 Shares, N. E. ¼ N. W. ¼, Sec. 24, Twp. 11 S., R. 36 E. B. M. 1,538.40

June 25, 1915, Cont. No. 144, F. W. Benninger, Cert. No. 144, 80 Shares, S. W. ¼ N. E. ¼, Sec. 24, Twp. 11 S., R. 36, E. B. M. 1,014.20

March 15, 1915, Cont. No. 145, Jas. C. Mock, Cert. No. 145, 40 Shares, S. E. ¼ S. W. ¼, Sec. 33, Twp. 11 S., R. 37 E. B. M. 1,349.20

April 9, 1910, Cont. No. 146, David Burnett, Cert. No. 146, 40 Shares, N. E. ¼ N. E. ¼ Sec. 30, Twp. 10 S., R. 37 E. B. M. .....

May 6, 1910, Cont. No. 149, Chas. O. Reynolds, Cert. No. 149, 81.03 Shares, Lot 3, and S. E. ¼ N. W. ¼, Sec. 6, Twp 11 S., R. 37 E. B. M. 2,916.21

April 14, 1910, Cont. No. 150, C. W. Woody, Cert. No. 150, 40 Shares, S. E. ¼ N. W. ¼, Sec. 12, Twp. 11 S., R. 36 E. B. M. 1,441.60

March 6, 1915, Cont. No. 153, John Dahlke, Cert. No. 153, 40 Shares, S. E. ¼ S. E. ¼, Sec. 32, Twp. 10 S., R. 37 E. B. M. 505.95

March 10, 1915, Cont. No. 154, Thomas Jenkins, Cert. No. 154, 36.21 Shares, E. ½ S. W. ¼, Sec. 5, Twp. 10 S., R. 37 E. B. M. 387.54

May 6, 1910, Cont. No. 157, Sarah F. Skeeles, Cert. No. 157, 80 Shares, S. W. ¼ S. W. ¼, Sec. 12, and S. E. ¼ S. E. ¼, Sec. 11, Twp. 11 S., R. 36 E. B. M. .....

March, 1915, Cont. No. 158, E. P. Sleeper, Cert. No. 158, 80 Shares, S. W. ¼ S. E. ¼, and S. E. ¼ S. W. ¼, Sec. 1, Twp. 11 S., R. 36 E. B. M. 2,565.60

[fol. 476] March 19, 1915, Cont. No. 161, Wm. I. Anderson, Cert. No. 161, 40 Shares, S. W. ¼ N. E. ¼, Sec. 31, Twp. 11 S., R. 37 E. B. M. 615.07

March 29, 1915, Cont. No. 162, H. E. Comine, Cert. No. 162, 40 Shares, N. W. ¼ S. E. ¼, Sec. 19, Twp. 11 S., R. 37 E. B. M. 1,353.20

September 16, 1910, Cont. No. 164, Benj. A. Norstrom, Cert. No. 164, 40 Shares, N. E. ¼ S. E. ¼, Sec. 12, Twp. 11 S., R. 36 E. B. M. 1,441.60

March, 1915, Cont. No. 165, H. W. Comine, Cert. No. 165, 80 Shares, N. ½ N. E. ¼, Sec. 13, Twp. 11 S., R. 36, E. B. M. 2,477.76

September 6, 1910, Cont. No. 168, Jo. S. Morrison, Cert. No. 168, 40.34 Shares, Lot 2, Sec. 1, Twp. 11 S., R. 36 E. B. M. 1,453 81

October 15, 1910, Cont. No. 169, Herman Anderson, Cert. No. 169, 79.75 Shares, Lot 2, and S. W. ¼ N. E. ¼, Sec. 4, Twp. 12 S., R. 37 E. B. M. 3,063 23

October 7, 1910, Cont. No. 170, Mrs. Georgia M. Statler, Cert. No. 170, 40 Shares, N. E. ¼ N. E. ¼, Sec. 31, Twp. 10 S., R. 37 E. B. M.

April 3, 1915, Cont. No. 171, E. L. Mattoon, Cert. No. 171, 53.34 Shares, Lot 5, Sec. 6, Twp. 11 S., R. 37 E. B. M. 533 58

October 8, 1910, Cont. No. 172, Guy C. Eaton, Cert. No. 172, 40 Shares, S. E. ¼ N. E. ¼, Sec. 14, Twp. 11 S., R. 36 E. B. M. 1,284 80

September 27, 1913, Cont. No. 176, Frank W. Blue, Cert. No. 176, 40 Shares, N. W. ¼ N. W. ¼, Sec. 13, Twp. 11 S., R. 36 E. B. M. 1,518 40

September 28, 1911, Cont. No. 177, F. Lee McDonough, Cert. No. 177, 80 Shares, N. W. ¼ S. E. ¼ and N. E. ¼ S. W. ¼, Sec. 1, Twp. 11 S., R. 36 E. B. M. 2,879 20

[fol. 477] March 17, 1915, Cont. No. 178, Lucian C. Farr, Cert. No. 178, 26 Shares, N. E. ¼ N. E. ¼, Sec. 17, Twp. 10 S., R. 37 E. B. M. 375 73

March 17, 1915, Cont. No. 179, Lucian C. Farr, Jr., Cert. No. 179, 42.56 Shares S. W. ¼ S. E. ¼, Sec. 8, Twp. 10 S., R. 37 E. B. M. 804 97

March 5, 1915, Cont. No. 180, Ira Goff and Sarah Goff, Cert. No. 180, 40 Shares, N. W. ¼ S. W. ¼, Sec. 29, Twp. 10 S., R. 37 E. B. M. 1,244 80

March 6, 1915, Cont. No. 181, Chas. McCormick, Cert. No. 181, 40 Shares, N. E. ¼ S. W. ¼, Sec. 29, Twp. 10 S., R. 37 E. B. M. 1,080 76

November 1, 1912, Cont. No. 182, Lucian C. Farr, Jr., Cert. No. 182, — Shares, S. E. ¼ N. E. ¼ and N. E. ¼ S. E. ¼, Sec. 17, Twp. 10 S., R. 37 E. B. M.

April 1, 1914, Cont. No. 183, Lucian C. Farr, Jr., Cert. No. 183, — Shares, N. W. ¼ N. E. ¼, Sec. 17, Twp. 10 S., R. 37 E. B. M.

April 1, 1915, Cont. No. 187, Chas. C. Hurst (Assigned Harold E. Tripp), Cert. No. 187, 15 Shares, N. E. ¼ N. W. ¼, Sec. 8, Twp. 10 S., R. 37 E. B. M. 510.00

July 1, 1915, Cont. No. 191, Heber F. Johnson, Cert. No. 191, 10 Shares, S. W. ¼ N. E. ¼ and N. E. ¼ N. W. ¼, Sec. 20, Twp. 10 S., R. 37 E. B. M 393.75

August 2, 1915, Cont. No. 192, C. D. McCormick, Cert. No. 192, 15 Shares, E. ½ N. W. ¼ and N. W. ¼ N. E. ¼, Sec. 29, Twp. 10 S., R. 37 E. B. M. 363.36

— Cont. No. 193, L. H. McCormick, Cert. No. 193, 15 Shares, E. ½ N. E. ¼ S. W. ¼ N. E. ¼, Sec. 29, Twp. 10 S., R. 37 E. B. M 181.68

[fol. 478] Ack. August 25, 1915, Cont. No. 194, Zeb Fitts, Cert. No. 194, 5 Shares, S. E. ¼ S. E. ¼, Sec. 12, Twp. 11 S., R. 36 E. B. M 109.38

Ack. August 6, 1915, Cont. No. 195, Abner L. Nichols, (Assigned Alfred E. Fisher) Cert. No. 195, 10 Shares, N. W. ¼ S. E. ¼, Sec. 12, Twp. 11 S., R. 36 E. B. M. 218.75

May 1, 1916, Cont. No. 196, Leo V. Johnson, Lorin Criddle, Cert. No. 196, 25 Shares, 27 acres in the S. E. ¼ of Sec. 21, Twp. 11 S., R. 37 E. B. M. 625.00

March 24, — Cont. No. 198, L. H. McCormick, Cert. No. 198, 10 shares, S. E. ¼ S. W. ¼ Sec. 29, Twp. 10 S., R. 37 E. B. M. 140.00

June 26, 1916, Cont. No. 199, Glee Smith, Paul Garvin, Cert. No. 199, 10 Shares, N. E. ¼ N. W. ¼, Sec. 32, Twp. 10 S., R. 37 E. B. M 245.03

June 17, 1916, Cont. No. 200, Ira Goff, Cert. No. 200, 40 Shares, N. E. ¼ S. E. ¼, Sec. 1, Twp. 11 S., R. 36 E. B. M 754.51

— Cont. No. 202, Otto Roundy, Cert. No. 5, S. W. ¼ S. W. ¼, Sec. 12, Twp. 11 S., R. 36 E. B. M. 175.50

Dec. 1, 1917, Cont. No. 203, Lorenzo M. Richards, Cert. No. 203, 5 Shares, N. E. ¼ S. W. ¼, Sec. 12, Twp. 11 S., R. 37 E. B. M 140.00

Dec. 1, 1917, Cont. No. 204, Lorenzo M. Richards, Cert. No. 204, 5 Shares, S. W. ¼ N. W. ¼, Sec. 12, Twp. 11 S., R. 37 E. B. M 140.00

Dec. 1, 1917, Cont. No. 205, Lorenzo M. Richards, Cert. No. 205, 5 Shares, N. W. ¼ S. W. ¼, Sec. 12, Twp. 11 S., R. 36 E. B. M. 140.00

[fol. 479] May 21, 1918, Cont. No. 206, Lorenzo M. Richards, Cert. No. 206, 5 Shares, S. E. ¼ N. W. ¼, Sec. 12, Twp. 11 S., R. 36 E. B. M. 140.00

— Cont. No. 207, Village of Downey, Cert. No. 207, 120 Shares. 4,860.00

March 6, 1915, Cont. No. A 8, Frederick L. Barns, Cert. No. A 8, 10 Shares, 10 acres in N. E. ¼ of Sec. 33, Twp. 11 S., R. 37 E. B. M. 130.64

March 27, 1915, Cont. No. A 9, W. P. Havenor, Cert. No. A 9, 172.56 Shares, Lot 7 and E. ½ of S. W. ¼, Sec. 6, and N. E. ¼ N. W. ¼, Sec. 7, Twp. 11 S., R. 37 E. B. M. 6,205.76

May 17, 1915, Cont. No. A 10, Ben S. Crow, Cert. No. A 10, 80 Shares, N. ½ N. E. ¼, Sec. 7, Twp. 11 S., R. 37 E. B. M. 1,456.25

March 3, 1915, Cont. No. A 11, W. H. Chester, Cert. No. A 11, 10 Shares, Lot 7 of acreage tracts, West O. S. L. Ry. in Sec. 33, Twp. 11 S., R. 37 E. B. M. 207.22

March 30, 1915, Cont. No. A 18, J. J. Barns, Cert. No. A 18, N. E. ¼ S. E. ¼, Sec. 5, Twp. 12 S., R. 37 E. B. M. 1,325.28

March 4, 1915, Cont. No. A 20, L. T. Whitaker, Cert. No. A 20, 39.97 Shares, 26.41 acres in N. E. ¼ S. W. ¼ and 13.56 acres in N. W. ¼ S. E. ¼, Sec. 27, Twp. 11 S., R. 37 E. B. M. 466.50

March 15, 1915, Cont. No. A 21, L. W. Johnson, Cert. No. A 21, 60 Shares, N. E. ¼ of S. W. ¼, Sec. 34, Twp. 11 S., R. 31 E. B. M. 1,920.00

March 12, 1915, Cont. No. A 23, C. H. Norton, Cert. No. A 23, 15 Shares, 15 acres in S. W. ¼ of S. E. ¼, Sec. 21, Twp. 11 S., R. 37 E. B. M. 361.16

[fol. 480] March 4, 1915, Cont. No. A 24, Wm. J. Rybee, Cert. No. A 24, 40 Shares, 40 acres in N. E. ¼ Sec. 22, and N. W. ¼, Sec. 22 Twp. 11 S., R. 37 E. B. M.

June 4, 1912, Cont. No. A 25, Chester O. Christensen, Cert. No. A 25, 30 Shares, 30 acres in the N. W. ¼ of the N. W. ¼, Sec. 5, Twp. 10 S., R. 37 E. B. M.

March 4, 1915, Cont. No. A 26, Michael V. Burton, Cert. No. A 26, 1 Share, 1 acre in the S. E. ¼ S. W. ¼, Sec. 32, Twp. 10 S., R. 37 E. B. M. .....

March 24, 1915, Cont. No. A 27, J. E. Byington, Cont. No. A 27, 2 Shares, Lot 11 of acreage tracts, West O. S. L. Ry. in Sec. 34, Twp. 11 S., R. 37 E. B. M. 204.14

March 3, 1915, Cont. No. A 29, Christian Dolder, Cert. No. A 29, 20 Shares, W. ½ of S. E. ¼ S. E. ¼, Sec. 31, Twp. 10 S., R. 37 E. B. M. 828.24

March 4, 1915, Cont. No. A 30, Gottfried Beutler, Cert. No. A 30, 30 Shares, E. ½ of S. W. ¼ of S. E. ¼, Sec. 31, Twp. 10 S., R. 37 E. B. M. 568.69

March 4, 1915, Cont. No. A 38, Andrew J. Newbold, Cert. No. A 38, 40 Shares, S. W. ¼ S. E. ¼, Sec. 16, Twp. 11 S., R. 37 E. B. M. 568.69

May 25, 1915, Cont. No. A 39, Ida P. Reisner, Cert. No. A 39, 40 Shares, Lot 8, Sec. 31, Twp. 10 S., R. 37 E. B. M., and Lot 4, Sec. 6, Twp. 11 S., R. 37 E. 2,925.00

March 31, 1915, Cont. No. A 46, Mary E. Linton, Cert. No. A 46, 5.44 Shares, Lot 17 of acreage tracts West O. S. L. Ry. Sec. 34 Twp. 11 S., R. 37 E. B. M. 349.46

[fol. 481] March 8, 1915, Cont. No. A 47, Peter W. Olsen, Cert. No. A 47, 31.6 Shares, S. W. ¼ S. W. ¼, Sec. 4, Twp. 11 S., R. 37 E. B. M. 1,134.95

March 3, 1915, Cont. No. A 48, C. W. Hancock, Cert. No. A 48, 52.33 Shares, Lot 3, Sec. 7, Twp. 11 S., R. 37 E. B. M. 4,000.00

June 25, 1916, Cont. No. A 150, O. P. Merrill, Cert. No. A 50, 5.05 Shares, Lot 16 of acreage tracts West O. S. L. Ry. Sec. 34, Twp. 11 S., R. 37 E. B. M. 176.75

October 16, 1916, Cont. No. W 1, John Layton, Cert. No. (W 1)? 40 Shares, 40 acres in the N. E. ¼ N. W. ¼, Sec. 27, Twp. 11 S., R. 37 E. B. M. 1,400.00

Cont. No. W 2, Geo. H. Maughn, Cert. No. (W 2)?, 35 Shares, S. E. ¼ N. W. ¼, Sec. 16, Twp. 11 S., R. 37 E. B. M. 1,750.00

October 19, 1916, Cont. No. W-3, T. D. Wallace, Cert. No. (W-3)?, 5 Shares, Fractional part of the S. W. ¼ of S. E. ¼, Sec. 27, Twp. 11 S., R. 37 E. B. M. 100.00

March, 1915, Cont. No. W-4, Geo. W. Hobbs, Cert. No. (W-4)?, 40 Shares, Fraction in S. W. ¼ S. E. ¼, Sec. 29, Twp. 10 S., R. 37 E. B. M. 1,999.00

— Cont. No. W-5, H. F. Johnson, Cert. No. (W-5)?, 20 Shares, E. ½ N. W. ¼, Sec. 20, Twp. 10 S., R. 37 E. B. M. 900.00

September 30, 1916, Cont. No. W-6, Morris A. Simpson, Cert. No. (W-6)?, 65 Shares, Fraction of 65 acres partly in S. E. ¼ of Sec. 21, Twp. 11 S., R. 37 E. B. M. 3,100.00

May 21, 1917, Cont. No. W-7, J. A. Capetner, Cert. No. (W-7)?, 80 Shares, S. ½ S. W. ¼, Sec. 22, Twp. 11 S., R. 37 E. B. M. 2,600.00

[fol. 482] — Cont. No. W-8, John Burrup, Cert. No. (W-8)?, 1 Share, S. W. ¼ S. W. ¼, Sec. 8, Twp. 11 S., R. 37 E. B. M. 700.00

March 6, 1915, Cont. No. P-2, J. E. Clegg, Cert. No. P-2, 10 Shares, 10 acres situated in Secs. 27 and 34, Twp. 11 S., R. 37 E. B. M. 650.91

March 4, 1915, Cont. No. P-3, A. W. Perkins, Cert. No. P-3, 9.54 Shares, 9.54 acres in N. E. ¼ of Section 34, Twp. 11 South of Range 37 E. B. M. 629.68

March, 1915, Cont. No. P-4, R. H. Palmer, Cert. No. P-4, 10 Shares, 10 acres in S. E. ¼ of Sec. 27, Twp. 11 S., R. 37 E. B. M. 650.90

March 4, 1915, Cont. No. P-6, Martha A. Wise, Cert. No. P-6, 20 Shares, 20 acres more or less in the N. E. ¼, Sec. 34, Twp. 11 S., R. 37 E. B. M. 1,325.10

March, 1915, Cont. No. P-7, R. H. Palmer, Cert. No. P-7, 10.85 Shares, 10.85 acres S. E. ¼ S. E. ¼, Sec. 27, Twp. 11 S., R. 37 E. B. M. 715.75

March, 1915, Cont. No. P-8, R. H. Palmer, Cert. No. P-8, 13.39 Shares, 13.39 acres more or less in N. E. ¼ Sec. 34, Twp. 11 S., R. 37 E. B. M. 882.62

May 20, 1915, Cont. No. P-10, H. M. Tibbetts, Cert. No. P-10, 10.43 Shares, 10.43 acres in S. E. ¼ Sec. 27, Twp. 11 S., R. 37 E. B. M. 881.31

March 10, 1915, Cont. No. P 11, Pinkney & Ferris, Cert. No. P 11, 17.72 Shares, 17.72 acres in S. W. ¼ of S. E. ¼ of Sec. 27 and N. W. ¼ of N. E. ¼ Sec. 34, Twp. 11 S., R. 37 E. B. M. 1,018.29

[fol. 483] March 4, 1915, Cont. No. P 13, Lorin Criddle, Cert. No. P 13, 9.83 Shares, 9.83 acres in W. ½ S. E. ¼, Sec. 27, Twp. 11 S., 37 E. B. M. 244.99

March 9, 1915, Cont. No. P 14, L. V. Johnson, Cert. No. P 14, 11.54 Shares, 11.54 acres in S. W. ¼ S. E. ¼, Sec. 27, Twp. 11 S., R. 37 E. B. M. 736.63

(c) Also those certain tracts of land in Bannock County, Idaho, acquired by complainants in the enforcement and foreclosure of the respective liens of certain water contracts theretofore deposited with said complainants as trustees, which said lands with the appurtenant water rights are now owned and held in pledge by complainants and in the place and stead of such water contracts.

The following list of such lands shows the Number of the water contract in the enforcement of which said lands were acquired, the name of the purchaser under such water contract, the number of shares of water stock appurtenant to the land as a water right, the number of the stock certificate evidencing such water right, and the description of said several tracts of land.

Cont. No. 16, A. F. Sorstedt, Cert. No. 16, 80 Shares, W. ½ N. W. ¼, Sec. 33, Tp. 11 S., R. 37 E. B. M.

Cont. No. 17, F. D. Cathcart, Cert. No. 17, 80 Shares, S. ½ S. E. ¼, Sec. 29, Twp. 11 S., R. 37 E. B. M.

Cont. No. 21, Mary Ethel Gregory, Cert. No. 21, 80 Shares, [fol. 484] W. ½ S. W. ¼, Sec. 33, Twp. 11 S., R. 37 E. B. M.

Cont. No. 22, D. W. Evans, Cert. No. 22, 80 Shares, E. ½ N. E. ¼, Sec. 32, Twp. 11 S., R. 37 E. B. M.

Cont. No. 23, Rob't L. Hardwick, Cert. No. 23, 40 Shares, S. E. ¼ S. W. ¼, Sec. 7, Twp. 11 S., R. 37 E. B. M.

Cont. No. X 31, Rob't S. Nelson, Jr. Cert. No. X 31, 80 Shares, E. ½ S. W. ¼, Sec. 20, Twp. 11 S., R. 37 E. B. M.

Cont. No. 33, C. E. Layton, Cert. No. 33, 80 Shares, S. ½ N. W. ¼, Sec. 29, Twp. 11 S., R. 37 E. B. M.

Cont. Nos. 37 and 39, J. E. Cathcart, Cert. Nos. 37 and 39, 160 Shares, W. ½ N. E. ¼, E. ½ N. W. ¼ Sec. 32, Twp. 11 S., R. 37 E. B. M.

Cont. Nos. N 54 and 120, A. F. Daughenbaugh, Cert. Nos. N 54 and 120, 160 Shares, S. E. ¼ S. E. ¼ Sec. 18; S. W. ¼ S. W. ¼; S. W. ¼ N. W. ¼; N. W. ¼ S. W. ¼, Sec. 17; Twp. 11 S., R. 37 E. B. M.

Cont. No. 77, John F. Widmann, Cert. No. 77, 40 Shares, S. W. ¼ N. W. ¼, Sec. 4, Twp. 12 S., R. 37 E. B. M.

Cont. No. 89, John F. Widmann, Cert. No. 89, 40 Shares, S. E. ¼ N. W. ¼, Sec. 4, Twp. 12 S., R. 37 E. B. M.

Cont. No. 95, John F. Widmann, Cert. No. 95, 78.73 Shares, Lot 4, Sec. 4, Lot 1, Sec. 5, Twp. 12 S., R. 37 E. B. M.

[fol. 485] Cont. No. 83, Oliver Chambers, Cert. No. 83, 80 Shares, E. ½ N. W. ¼, Sec. 30, Twp. 11 S., R. 37 E. B. M.

Cont. No. 84, Everard Chambers, Cert. No. 84, 80 Shares, S. W. ¼ N. E. ¼, N. W. ¼ S. E. ¼, Sec. 30, Twp. 11 S., R. 37 E. B. M.

Cont. No. 97, F. D. Staves, Cert. No. 97, 80 Shares, S. ½ N. E. ¼, Sec. 19, Twp. 11 S., R. 37 E. B. M.

Cont. No. 108, H. A. Weddle, Cert. No. 108, 39.57 Shares, Lot 3, Sec. 4, Twp. 12 S., R. 37 E. B. M.

Cont. No. 128, Lottie L. Cobb, Cert. No. 128, 79.43 Shares, S. W. ¼ S. E. ¼, Sec. 32, Twp. 11 S., R. 37 E. B. M. and Lot 2, Sec. 5, Twp. 12, S., R. 37 E. B. M.

Cont. No. 129, L. A. Trowbridge, Cert. No. 129, 80 Shares, N. W. ¼ S. E. ¼; N. E. ¼ S. W. ¼, Sec. 32, Twp. 11 S., R. 37 E. B. M.

Cont. No. 137, Olivia J. Hanchett, Cert. No. 130, 80 Shares, N. E. ¼ S. W. ¼, Sec. 19, S. E. ¼ S. W. ¼, Sec. 18, Twp. 11 S., R. 37 E. B. M.

Cont. No. 135, G. F. Crump, Cert. No. 135, 40 Shares, S. W. ¼ S. W. ¼, Sec. 5, Twp. 11 S., R. 37 E. B. M.

Cont. No. 152, W. B. Astin, Cert. No. 152, 40 Shares, N. E. ¼ N. W. ¼, Sec. 31, Twp. 11 S., R. 37 E. B. M.

Cont. No. 155, Elizabeth Burhoe, Cert. No. 155, 80 Shares, N. E. ¼ S. W. ¼; S. E. ¼ N. W. ¼, Sec. 18, Twp. 11 S., R. 37 E. B. M.

Cont. No. 174, R. H. Christenson, Cert. No. 174, 40 Shares, S. E. ¼ S. E. ¼, Sec. 8, Twp. 11 S., R. 37 E. B. M.

[fol. 486] Cont. No. A 12, Fred Meuhler, Cert. No. A 12, 10 Shares, Lot 13 of acreage tracts in Sec. 34, Twp. 11 S., R. 37 E. B. M.

Cont. No. A 46, Mary E. Linton, Cert. No. A 46, 5.44 Shares, Lot 17, of acreage tracts in Sec. 34, Twp. 11 S., R. 37 E. B. M.

(d) 2,418 shares of the unissued capital stock of defendant Portneuf-Marsh Valley Canal Company, Limited, which said shares of stock are the property of defendant Portneuf-Marsh Valley Irrigation Company, Limited, but subject to the lien of said trust deed and purport to represent a proportionate interest in said irrigation works, water rights, and franchises described in said trust deed in the proportion that the number 2,418 bears to the number 14,000, said shares of stock being all the remaining capital stock of said Portneuf-Marsh Valley Canal Company, Limited, out of the total of 14,000 shares authorized and limited to be sold, said stock being stock not yet sold to purchasers and made appurtenant to land.

II

That there are outstanding 425 bonds, each of $500.00 denomination, which said bonds are now due and payable, together with interest thereon at 6% per annum from July 1st, 1914, and each of said bonds and the interest thereon is secured by the said deed of trust or indenture of mort-
[fol. 487] gage and each and every of said bonds is entitled, without preference or priority of one over the other, to the benefit afforded as security by said deed of trust or indenture of mortgage.

III

That there is at the date of this decree owing and unpaid on said outstanding bonds of the defendant Portneuf-Marsh Valley Irrigation Company, Limited, and secured by said mortgage or deed of trust, as principal and interest the following amounts, no part of which have been paid:

Principal, $212,500.00.

Interest, $126,437.50.

Amount due for principal and interest at the date of this decree, $338,937.50.

IV

That the complainants are entitled to reasonable compensation for services rendered by them pursuant to the provisions of said trust deed, and it is ordered, adjudged and decreed that the reasonable compensation of the complain-

ants in these premises is the sum of $7,500.00; and have incurred obligations for counsel and attorneys' fees in connection with this foreclosure suit in the sum of $5,000.00, which is a reasonable attorneys' fee; all of which sums are secured by said trust deed and by the water contracts de[fol. 488] posited with complainants, and by the lands and water rights acquired by complainants in the enforcement and foreclosure of certain water contracts as aforesaid.

V

That for convenience in the continued operation and ownership of the irrigation works and system above described and by consent of the parties hereto as to the form of the decree in this particular, no sale of the physical property, rights and franchises comprising said irrigation works as set forth in subdivision "a" of paragraph one of this decree is ordered to satisfy this decree, but instead and in lieu thereof the property hereinafter described shall be sold, a part of which property is the shares of stock of defendant Portneuf Marsh Valley Canal Company, Limited, which purport to represent that proportionate beneficial interest in said irrigation works, rights and franchises upon which said mortgage or deed of trust now operates as a lien; accordingly the water contracts deposited in pledge with complainants and enumerated in subdivision "b" of paragraph one of this decree together with the shares of stock in said defendant Portneuf Marsh Valley Canal Company, Limited, pledged and deposited in connection therewith; also those certain tracts of land and water rights (said water rights being represented by shares of the capital stock of the defendant Portneuf Marsh Valley Canal Company, Limited) acquired by com[fol. 489] plainants in the foreclosure and enforcement of water contracts theretofore deposited in pledge with complainants as enumerated in subdivision "c" of paragraph one of this decree and also said 2,418 shares of the capital stock of defendant Portneuf-Marsh Valley Canal Company Limited, which have not heretofore been sold to land owners and made appurtenant to land. (Said shares of unsold stock being those referred to in subdivision "d" of paragraph one of this decree) shall be sold as an entirety and without redemption by the Master Commissioner herein

after named unless the amount found due herein shall be paid prior to the date hereinafter fixed.

VI

That defendant Portneuf-Marsh Valley Canal Company, Limited, has, by reason of assessments heretofore levied to defray the necessary expenses of operation and maintenance of said irrigation system, and by reason of proceedings for the collection thereof, a valid and subsisting lien or claim upon certain of the shares of water stock directed to be sold, which lien or claim is superior to the lien or interest of any of the other parties to this action.

A list of the certificates of such water stock with the aggregate amount of the lien or claim of said defendant Portneuf Marsh Valley Canal Company, Limited, upon the shares of stock embraced in each several certificate is as follows:

[61 499]

Cert. No.	Name	Stock certificate No.	Stock certificate Shares	Total amt due P. M. V. Canal Co.
3	Minor W. Alldridge	X 3	40	$582 07
4	F. C. Knight	4	80	1,131 12
11	O. A. Smith	11	80	851 03
14	Harry M. Tibbitts	14	80	886 23
16	(A. F. Sorstedt (A. F. Daughenbaugh	16	80	1,032 61
17	D. C. Cathcart	17	80	1,341 57
20	W. K. Walton	20	40	576 75
21	Mary Ethel Mock	21	80	1,039 42
22	D. W. Evans	22	80	1,326 61
24	Harry M. Tibbitts	24	80	868 79
31	Robert S. Nelson	A 31	80	1,441 56
32	Anton K. Dahlen	32	40	869 35
33	C. E. Layton	33	80	1,326 76
34	C. N. Ray	34	80	880 24
35	D. E. Kent	35	80	1,782 24
37	J. C. Cathcart	37	80	1,508 64
38	Antonet Treganza	38	40	637 46
39	J. E. Cathcart	39	80	1,316 29
40	R. L. Van Eaton	40	40	676 77
41	F. C. Knight	41	80	1,684 61
42	Vinnie R. Walling	42	80	885 91

Cont. No.	Name	Stock certificate No.	Stock certificate Shares	Total amt due P. M. V. Canal Co.
45	H. C. Taylor	45	80	1,580 28
52	T. C. Lawler	52	80	1,782 24
54	A. E. Daughenbaugh	X-54	80	1,328 42
55	E. E. Gillespie	55	80	1,782 24
65	Sophia C. Roberts	65	40	168 06
66	Chas. R. John	66½ of	80	721 59
67	C. H. Overton	X-67	80	1,634 00
69	J. W. Alldred	69	80	1,782 24
(77	John F. Widmann	77	40	683 75
(80	John F. Widmann	80	40	683 75
80	Mary F. Zoerb	80	80	577 50
81	W. F. Kasiska Willard Kingsford	81	80	885 80
[fol. 491]				
83	Oliver Chambers	83	80	1,501 64
84	Everard Chambers	84	80	1,501 64
85	(Otto Rounsly ½ of (H. A. Peterson Co. ½ of	85	40	276 20
		85	40	74 80
95	John F. Widmann	95	78 13	1,555 29
96	J. Lee Peterson ½ of 96½ Granite Realty Co. ½ of	96	40	71 63
		96	40	108 55
97	S. D. Staves	97	80	503 75
101	Emma Beckley	101	40	187 77
104	John H. Moyes	104	40	801 52
105	H. V. Monell	105	80	1,580 84
108	H. A. Weddle	108	39 57	738 06
114	O. P. Merrill, Alice S. Merrill and Elmer T. Richards	114	40	517 13
115	E. C. White	115	80	1,539 82
116	Wm. Underwood and E. W. Johnson	116	40	844 55
118	E. E. Gillespie	118	40	801 52
119	H. V. Monell	119	80	1,441 64
120	A. F. Daughenbaugh	120	80	1,416 04
121	E. C. White	121	80	1,320 47
123	Geo. A. Nixon	123	80	1,782 24
127	Albert S. Maxham	127	80	1,678 68

Cust. No.	Name	Stock certificate No.	Stock certificate Shares	Total amt due P. M. V. Canal Co.
128	Lottie L. Cobb	128	79 43	1,318 94
129	L. A. Trowbridge	129	80	1,326 61
130	Olivia J. Hatchett	130	80	1,326 61
135	D. R. Taylor	135	40	471 41
141	O. M. Ingdahl	141	79 93	1,780 66
143	Wm. Webster	143	40	801 32
145	Joseph C. Mock	145	40	663 97
146	Thos. Coffin	146	40	801 32
149	Chas. O. Reynolds	149	81 03	1,338 60
150	Chas. Wessly	150	40	803 03
152	Wm. S. Astin	152	40	747 10
[fol. 492]				
155	Elizabeth H. Barbee	155	80	1,430 24
158	Finley P. Sleeper	158	80	1,309 33
162	H. E. Comte	162	40	801 32
164	Berry A. C. Norstrom	164	40	870 78
165	D. W. Comte	165	80	1,487 94
168	Jos. C. Morrison	168	40 24	809 03
169	Herman Anderson	169	79 98	1,776 96
172	Geo. E. Eaton	172	40	869 29
176	Frank Blue	176	40	882 15
177	F. Lee McDough	177	80	1,782 24
180	Geo. W. Hobbs	180	40	572 20
A 9	W. P. Haverer	A 9	172 56	3,408 44
A 12	Fred Mueller	A 12	10	196 28
A 18	J. J. Barnes	A 18	20	333 45
A 21	L. W. Johnson	A 21	60	1,287 07
A 25	Chester Christenson	A 25	30	654 58
A 27	J. H. Byington	A 27	2	36 99
P 2	John Clegg	P 2	10	205 35
P 3	A. R. Perkins	P 3	9 54	192 85
P 4	R. H. Palmer	P 4	10	187 61
P 6	Martha Wise	P 6	20	385 87
P 7	R. H. Palmer	P 7	10 85	210 94
P 8	R. H. Palmer	P 8	13 28	265 22
P 10	Harry M. Tibbetts	P 10	10	72 50
P 11	Pinkney & Ferris	P 11	17 72	353 41
P 14	Lee V. Johnson	P 14	11 54	235 58
	Aggregate amount due Portland Marsh Valley Canal Company, Ltd			889,617 64

VII

That unless the defendant Portneuf Marsh Valley Irrigation Company, Limited, or someone in its behalf, shall pay to the complainants on or before the first day of No- [fol. 493] vember, 1928, the several amounts found due hereunder, to wit:

The sum of $7,381.80 for compensation to Complainants;

The sum of $3,381.80 as and for the compensation of complainants' attorneys in this suit;

The sum of $[illegible] as and for the amount found due for principal and interest upon the bonds outstanding under said trust deed;

together with interest on said several sums at 7% per annum from the date of the entry of this decree to the date of such payment, and shall pay to the defendant Portneuf Marsh Valley Canal Company, Limited, the aggregate amounts of the sums specified in paragraph VI hereof for which said defendant Portneuf Marsh Valley Canal Company, Limited, is herein adjudged to have a lien or claim upon the parcels of stock listed in said paragraph VI, together with interest thereon to the date of such payment.

It is ordered, that Myron Sweitzer, who is hereby named as Special Master Commissioner to execute this decree, sell all of said property directed to be sold; and said Special Master Commissioner shall give notice of said sale by publication once each week for four successive weeks preceding the date of said sale in a newspaper published and in general circulation in Bannock County, Idaho; said notice [fol. 494] of sale shall contain a description of the property to be sold and the terms of sale. The sale shall be made at the front door of the Post Office Building in the City of Pocatello, County of Bannock, State of Idaho; that all of said property directed to be sold be sold in bulk and as an entirety and all without the right of redemption, the same to all intents and purposes as though all of said property were personal property. The Special Master Commissioner is hereby empowered to adjourn said sale at any stage of the proceedings to any room in said Post Office Building available for that purpose and convenient for use and he may, at his discretion, adjourn the sale for any reasonable

time for any cause that may seem to him good and sufficient by announcing at the time and place appointed for such sale the adjournment thereof and the time and place to which said sale shall be adjourned, and may, in like manner from time to time thereafter adjourn such sale without further advertisement.

Upon the sale of the property herein provided to be sold any party to this suit and any holder or holders of bonds secured by said trust deed or any committee of bond holders may become the purchaser or purchasers at said sale.

The Court fixes no upset price for said sale but reserves the jurisdiction to confirm or not to confirm any sale pro- [fol. 495] visionally accepted by the Special Master Commissioner on the coming in of his report of sale.

The purchaser at said sale shall pay in cash, at or prior to the time of confirmation of said sale, such amount as shall be required to pay in full the lien or claim of defendant Portneuf-Marsh Valley Canal Company, Limited, upon the shares of its capital stock as specified and set forth in paragraph VI hereof. Provided, however, that in case the complainants become the purchasers at such sale they may, if they so elect instead of making payment in cash in the amount of the lien herein decreed to said defendant Portneuf-Marsh Valley Canal Company, Limited, omit or decline to pay the amount representing the lien of said Portneuf-Marsh Valley Canal Company, Limited, upon any one or more stock certificates, and in lieu of such payment the Special Master Commissioner aforesaid shall deliver such stock certificate to said defendant Portneuf-Marsh Valley Canal Company, Limited, and the same shall become its property absolutely.

In case any successful bidder shall fail to comply with the terms and conditions of the sale the Court may resell the property hereby directed to be sold.

The balance of the purchase money or that part of the purchase money not herein required to be paid in cash and [fol. 496] up to the amount of plaintiffs' claim may be paid by the purchaser or purchasers either in cash or in bonds and the respective coupons belonging thereto secured by said mortgage or deed of trust and hereinbefore adjudged to be secured thereby; and such bonds and coupons shall be received at such value as would be equivalent to the dis-

tributable amount which the holder thereof would be entitled to receive from and out of the purchase money in case the entire amount of the bid were paid in cash.

It is further ordered, adjudged and decreed that the funds arising from such sale shall be applied as follows and in the order here stated:

(a) To the payment of the expenses of the sale, including the compensation of the Special Master Commissioner.

(b) To the payment of the lien or claim of the defendant Portneuf Marsh Valley Canal Company, Limited, upon the parcels of its capital stock as set forth in paragraph VI hereof, less (in case the complainants become the purchasers at such sale) any sums decreed as liens upon such parcels of stock as shall be delivered to said defendant Portneuf Marsh Valley Canal Company, Limited, in lieu of the payment of such lien.

[fol. 497] (c) Costs of suit, charges, compensation, allowances and disbursements of the complainants including allowance for attorneys' fees.

(d) To the amount found due upon the outstanding bonds secured by said trust deed as found in this decree together with interest thereon at 7% per annum from the date of this decree to the date of said sale.

(e) Any surplus money in the hands of the Special Master Commissioner shall be by him retained to await the further order of this Court.

It is further ordered, adjudged, and decreed that the Special Master Commissioner execute and deliver to the purchaser or purchasers assignments and conveyances of the property sold but not until after the confirmation of the sale. As soon as any sale has been made by the said Special Master Commissioner in pursuance of this decree, he shall report the same to this Court for confirmation and shall from time to time thereafter make such supplemental reports as shall be necessary to keep the Court advised of his proceedings and said Special Master Commissioner and said complainants shall, after, confirmation of sale and payment of the purchase price, deliver to the said purchaser or purchasers, his or their successors or assigns, all and

singular the property hereby directed to be sold now or then in their possession.

[fol. 498] It is further ordered, adjudged, and decreed that such purchaser or purchasers of said property and their successors and assigns, after the confirmation of said sale and the delivery of said conveyance or conveyances, shall hold and possess said property and every part thereof as fully and completely as the said Portneuf-Marsh Valley Irrigation Company, Limited, held and enjoyed the same and was entitled to hold and enjoy the same at the date of the commencement of this suit, and at any time since, and shall be entitled to hold and have all and singular the property so conveyed free and discharged from all rights, claims and liens of the defendant Portneuf-Marsh Valley Irrigation Company, Limited, and any of the other defendants herein save and except as herein otherwise expressly provided.

The purchaser at said sale by said Master Commissioner of the 2418 shares of the unissued water stock of said Portneuf-Marsh Valley Canal Company, Limited, referred to in subdivision (d) of paragraph 1 of this decree, shall succeed to all the presently existing rights therein of the Portneuf Marsh Valley Irrigation Company, Limited, under and subject to the provisions of the Articles of Incorporation of the respective corporate defendants, their by-laws, any valid and subsisting contracts between them, the contract between the State of Idaho and the Portneuf-Marsh Valley [fol. 499] Irrigation Company, Limited, and the contracts between this Company and the settlers, and the statutes of the United States and of the state of Idaho, so far as any of the same may be applicable thereto.

VIII

And it is further ordered and decreed that if the moneys arising from the said sale shall be insufficient to pay the amounts so found to be due to the plaintiffs and to the Portneuf Marsh Valley Canal Company, Limited, a corporation, defendant, together with the interest and costs and expenses of sale, as aforesaid, that the said Special Master Commissioner in his return of said sale specify the amount of such deficiency and the balance due to said plaintiffs, and that on the confirmation of said sale, after the filing of said re-

turn, the said plaintiffs do have and recover the said balance from the said defendant Portneuf-Marsh Valley Irrigation Company, Limited, who is personally liable for the debt secured by said trust deed, and that judgment for said deficiency be then entered, with interest thereon at the rate of seven (7) per cent. per annum from date thereof, and that said plaintiffs have execution therefor.

IX

No matter pertaining to the rights of the settlers to and in said premises or any part thereof by virtue of their water [fol. 500] contracts heretofore entered into with the defendant Portneuf Marsh Valley Irrigation Company, Limited, and no matter pertaining to the rights of said settlers in and to said contracts or the shares of water stock purchased thereunder are adjudicated by this decree, but all such matters are left for adjudication between such parties and the purchaser or purchasers at the sale held hereunder as such matters may hereafter arise.

Dated this 1st day of June, 1924.

Frank S. Dietrich, District Judge.

[File endorsement omitted.]

In United States District Court

Petition for Appeal and Order Allowing Same—Filed October 9, 1924

To Honorable Frank S. Dietrich, District Judge:

The above named plaintiffs, Howard W. Brown and John R. Chapin, trustees, feeling aggrieved by the decree rendered herein and filed in the above entitled cause on the 26th day of June, 1924, do hereby appeal from said Decree to the Circuit Court of Appeals for the Ninth Judicial Cir- [fol. 501] cuit for the reasons set forth in the assignment of errors filed herewith, and they pray that their appeal be allowed and that citation be issued as provided by law, and that a transcript of the record and proceedings and docu-

ments upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit under the rules of such court in such cases made and provided.

And your petitioners further pray that the proper order relating to the required security to be required of them be made.

Dated this — day of October, 1924.

John A. Marshall, Residence Salt Lake City, Utah; Edwin Snow, Residence Boise, Idaho, Attorneys for Plaintiffs and Appellants.

Appeal allowed upon giving bond as required by law for the sum of $500.00.

Frank S. Dietrich, United States District Judge.

[File-endorsement omitted.]

[fol. 502] IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed October 9, 1924

Now come the plaintiffs in the above entitled cause and file the following assignment of errors upon which they will rely in their prosecution of the appeal in the above entitled cause from the decree made by this Honorable Court and filed herein on the 26th day of June, 1924.

I

The Court erred in making and entering its decree herein awarding and decreeing to the defendant Portneuf-Marsh Valley Canal Company Limited, by reason of assessments theretofore levied by it to defray the expenses of operation and maintenance of the irrigation system in controversy, and by reason of proceedings for the collection of such assessments, a valid and subsisting lien or claim, or valid or subsisting liens or claims, on any of the shares of stock directed by said decree to be sold.

II

The Court erred in decreeing that any such lien or claim or pretended lien or claim of the defendant Portneuf-Marsh Valley Canal Company, Limited, upon any of the said stock to be sold under said decree is superior or prior to the lien or interest of the plaintiffs in said stock.

[fol. 503] III

The Court erred in not holding and decreeing that the shares of stock specified in Paragraph Six of the decree were not held by the defendant Portneuf-Marsh Valley Canal Company, Limited, or any lien or claim on any of the stock held by said defendant subject to the rights of plaintiffs under the trust deed foreclosed in this action and under the pledge of said stock until the several amounts due on the purchase price of said stock are fully and finally paid.

IV

The Court erred in not holding and decreeing that the trust deed foreclosed in the action was not a prior lien on the property covered thereby and the whole thereof, and the property pledged in connection therewith, excepting only to the extent of payments actually made by settlers on outstanding contracts for the purchase of shares or water rights in the irrigation system.

V

The Court erred in holding and decreeing that any sum of money derived from the sale of the property on foreclosure should be applied in satisfaction of the lien or claim, or pretended lien or claim of the defendant Portneuf-Marsh Valley Canal Company before being applied on plaintiffs' claim.

[fol. 504] VI

The Court erred in not holding, deciding and decreeing that all the assessments or pretended assessments levied by defendant Portneuf-Marsh Valley Canal Company are absolutely void because in excess of the limitation prescribed by the statutes of the State of Idaho.

VII

The Court erred in not holding, deciding and decreeing that assessments levied by defendant Portneuf-Marsh Valley Canal Company, Limited, while the latter was a defunct corporation under the laws of the State of Idaho are absolutely void.

VIII

The Court erred in overruling plaintiffs' several objections to the introduction in evidence of each of the defendants' exhibits Nos. 1 to 16, inclusive, each of said exhibits being of the same nature, to wit: evidence purporting to show a valid assessment and proceedings for the enforcement thereof on the shares of stock, or some of the shares of stock, specified in paragraph Six of said decree.

Wherefore the plaintiffs and appellants pray that said decree be reversed and that such decree be entered as is meet and equitable.

[fols. 505-510] John A. Marshall, Residence Salt Lake City, Utah; Edwin Snow, Residence Boise, Idaho, Attorneys for Plaintiffs and Appellants.

[File endorsement omitted.]

Bond on appeal for $500.00, approved and filed October 9, 1924, omitted in printing.

[fol. 511 & 512] Citation, in usual form, filed October 9, 1924, omitted in printing.

[fol. 513] In United States District Court

Stipulation re Statement of Evidence. Filed October 9, 1924

It is hereby stipulated between the parties hereto that the statement of the evidence and proceedings in the above entitled cause, said statement being lodged with the Clerk of the above entitled Court on September 25, 1924, may be

settled and allowed as a true, complete and correct statement.

John A. Marshall, Residence Salt Lake City, Utah; Edwin Snow, Residence Boise, Idaho, Attorneys for Plaintiff. McDougall, McDougall and McDougall, D. C. McDougall, Attorney for Defendant Portneuf-Marsh Valley Canal Company, Limited. H. S. MacMartin, Attorney for Defendant, Portneuf-Marsh Valley Irrigation Company, Limited.

Dated September 30th, 1924.

[fol. 514] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed October 16, 1924

The Clerk of the above entitled Court is hereby directed to transcribe for the record on appeal herein by plaintiffs the following papers:

Bill of Complaint.
Answer to Bill in Equity.
Reply to Counterclaim.
Statement of evidence and proceedings.
Decision of the trial court.
The Decree made and entered in said cause.
Petition for Appeal.
The order allowing same.
Assignment of Errors.
Praecipe to the Clerk of said Court.
The Bond on appeal.
Citation.
The Clerk's return to record, and
Clerk's Certificate.
Stipulation relating to form of Decree.
Stipulation for settlement of statment of evidence.

[fol. 515] Said Clerk is directed in preparing the record to exclude the formal and immaterial parts of said exhibits, pleadings and documents. Said Clerk is also re-

quested to attach his certificate to each original exhibits, if any, transmitted to the above Court.

Dated this 9th day of October, 1924.

John A. Marshall, Residence Salt Lake City, Utah; Edwin Snow, Residence Boise, Idaho, Attorneys for Plaintiffs and Appellants.

Due service of the foregoing is hereby admitted this 13 day of October, 1924.

D. C. McDougall, McDougall, McDougall and McDougall, Attorneys for Defendant, Portneuf-Marsh Valley Canal Company, Limited. H. S. MacMartin, Attorney for Defendant, Portneuf-Marsh Valley Irrigation Company, Limited.

[fols. 516-520] [File endorsement omitted.]

RETURN TO RECORD

And thereupon it is ordered by the Court that the foregoing transcript of the record and proceedings in the said cause aforesaid, together with all things thereunto relating, be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

W. D. McReynolds, Clerk. (Seal.)

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 521] Minute entry of argument and submission, February 20, 1925, omitted in printing.

[fol. 522] In United States Circuit Court of Appeals, Ninth Circuit

No. 4405

Howard W. Brown and John R. Chaplin, as Trustees, Appellants

vs.

Portneuf-Marsh Valley Irrigation Company, a Corporation, et al., Appellees

Order to File Opinion and Decree—May 25, 1925

By direction of the Honorable Erskine M. Ross, William H. Hunt, and Frank H. Rudkin, Circuit Judges, before whom the matter was heard, ordered that the typewritten opinion, this day rendered by this Court in the above-entitled cause, be forthwith filed by the Clerk, and that a [fol. 523] decree be filed and recorded in the minutes of this court in accordance with said opinion.

In United States Circuit Court of Appeals

[Title omitted]

Upon Appeal from the United States District Court for the District of Idaho, Eastern Division

Before Ross, Hunt, and Rudkin, Circuit Judges

Opinion—Filed May 25, 1925

Ross, Circuit Judge:

This is one of a number of similar cases that have heretofore reached and been considered by this Court. It grows out of the establishment and construction of an irrigation system in Bannock County, Idaho, under and in pursuance of an Act of Congress approved August 18, 1894 (28 St. Lg. 372, 422), and amendments thereto, known as the Carey Act, and certain legislation of the State of Idaho. The pro- [fol. 524] visions of the Acts of Congress with relation to

the subject and certain provisions of the legislation of the State of Idaho will be found set out in the decision of this Court in the case of Twin Falls Salmon River Land & Water Co. et al. vs. Caldwell et al., 243 Fed. 177, 178, 179, 180, 181, 182, and we need not, therefore, take the space to repeat them.

The project involved in the present case originally covered about 20,000 acres of land in the vicinity of Downey in the State of Idaho, that had been set apart by the Government by virtue of the Act of Congress referred to, and involved the construction of a reservoir at the head-waters of the Portneuf River, and a system of canals by which both the stored water and the natural flow of the stream were to be diverted and applied to the land.

The appellee Portneuf-Marsh Valley Irrigation Company, a corporation, was the construction company, and the appellee Portneuf-Marsh Valley Canal Company, a corporation, was the operating company organized by the construction company with a capital stock of 20,000 shares, to which the whole irrigation system was added, with certain stipulations agreed to by both parties thereto. The acreage contemplated at the beginning of the enterprise was subsequently found to be greater than could be supplied with water and it was, accordingly, reduced to 14,000 acres, of which latter area the construction company succeeded in selling water rights for only about 12,240 acres. The operating company, therefore, continued to hold and now holds 1,760 shares of its own stock, representing a propor-[fol. 525] tionate interest in the irrigation system, to build which it became necessary for the construction company to secure money with which to build it; and to do that, it became necessary for it to mortgage the system itself and to pledge certain collateral as additional security for the bonds it issued. The appellants became Trustees for such bondholders and brought this suit to foreclose the mortgage and the pledged collateral.

The contract between the State of Idaho, through its State Board of Land Commissioners, and the construction company, was entered into June 3, 1908, and provided among other things that the construction company should "sell or cause to be sold to the person or persons filing upon any of the lands herein described, or to the owners

of the lands not described herein but which are or may be susceptible for irrigation from their canal system by good and sufficient contract of sale with right of possessions and enjoyment by the purchaser pending its fulfillment, a water right or share in said canal for each and every acre filed upon or purchased from the State or acquired from the United States, or held in private ownership. * * * Such water rights or shares shall be sold to the persons or person aforesaid for lands included in said segregation under the provisions of the 'Carey Act' and for lands adjacent thereto or that can or may be irrigated from said irrigation system when completed, all at a price not to exceed $35.00 per share, except as is hereinafter provided, the same to be paid for as follows:

[fol. 526] "In cash at time of sale ($3.00) Three Dollars per share and the remainder in nine equal annual installments, each bearing the interest at the rate of six per cent (6%) per annum, interest payable annually."

The contract between the State and the construction company also provided as follows:

"It being necessary to provide a convenient method of transferring the ownership and control of said canal and irrigation works from the said party of the second part herein to the purchasers of said water rights in said canal and for determining their rights among themselves and between said purchasers and the party of the second part herein and for the purpose of operation and maintaining said canal during the period of construction and afterwards, and for the purpose of levying and collecting tolls, charges and assessments for managing said canal and for the management and operation thereof it is hereby provided that as soon as said lands are ordered thrown open for settlement, a corporation to be known as the Portneuf-Marsh Valley Company, Limited, shall be formed at the expense of the party of the second part, the Articles of Incorporation of said company, to be approved by the Attorney of the State of Idaho; that the authorized capital of said corporation shall be twenty thousand (20,000) shares, which amount is intended to represent one share for each acre of land which may hereafter be irrigated from said [fol. 527] canal. All persons, who prior to the formation

of such corporation, have purchased or acquired said water rights or shares of stock in said corporation, and the number of lands embraced in this contract and being then the owners of such rights or shares, shall be entitled to receive and have issued to them, shares in such corporation so to be formed, equal in number to the water rights or shares of water then owned and held by such persons, and the remainder of the capital stock of such corporation shall be issued to the party of the second part in consideration of the covenants and agreements herein contained in order to enable it to deliver to purchasers of water rights the shares of stock representing the same. Said shares of stock, however, shall have no voting and shall be without force or effect until they have been sold or contracted to be sold to the purchasers of land under said irrigation works.

At the time of the purchase of any water right after the formation of said corporation, there shall be issued to the purchaser thereof, one share of the capital stock of said corporation for each acre of land entered on said maps. That the said party of the second part hereto shall, in case said water rights or shares of stock are not fully paid for, require the endorsement and delivery to it of said stock, and shall at the same time require of said purchasers an agreement that until thirty-five per cent (35%) of the purchase price of said stock has been paid, the said party of the [illegible] second part thereto shall vote said stock in such manner as it may deem proper at all meetings of the stockholders of said corporation."

It further provided, among other things, as follows:

"The right, title and interest of the second party in the said works and irrigation system and in the said lands may be mortgaged, as provided by the said Acts of Congress and the laws of the State of Idaho, hereinbefore referred to; the form of such mortgage to be approved by the Attorney General of Idaho. * * *

It is hereby understood and expressly agreed that this contract is made and entered into by virtue of the provisions and subject to all of the conditions of an Act of Congress, commonly known as the 'Carey Act,' approved August 18, 1894, and the acts amendatory thereto and the

laws of the State of Idaho, excepting the terms and provisions of the said "Carey Act," and the contract between the United States, and the State of Idaho, segregating from the public domain the lands herein designated as "Carey Act Lands, and that such laws and contracts are as much a part of this contract as if specifically herein set forth."

The record shows that prior to the sale by the construction company of any of the water rights, its Board of Directors and stockholders authorized a bond issue in the [fol. 329] sum of $300,000, to be secured by a trust deed upon the appropriated water and the irrigation system then being constructed, which instrument provided as follows:

"Before any bonds shall be issued under this instrument there shall be pledged hereunder with Colonial Trust and Savings Bank, one of the Trustees, water contracts owned by the Company or soon owned by mortgage or deed of trust upon land and water rights thereunto attached (hereinafter called 'notes') or such money, or partly water contracts, and partly secured notes or cash moneys, aggregating at par one and one half (1½) times the par value of the installment of bonds of this issue then demanded by the Company and issued by the said Trustee hereunder. But the said Trustee shall require the opinion of counsel, selected by it and paid by the Company, to the effect that said water contracts (if water contracts are so deposited) are and constitute deed liens upon real estate capable of being irrigated from the irrigation system of the Company, or that said notes or notes are so deposited) are amply secured by mortgages or trust deeds which are direct liens upon real estate capable of being irrigated from the irrigation system of the Company to which lands have been attached water rights sufficient to irrigate them, and both such lands and water shall be subjected to the lien of such mortgage or deed of trust."

[fol. 330] The record shows that in the year 1915 the irrigation system was completed and accepted by the State of Idaho, prior to which time the right reserved in the contract between the State and the construction company, reserving to the latter the right to vote the settlers' stock in that company, was by them waived.

Upon the completion of the system and its acceptance by the State, a contract was entered into between the construction company and the canal company, which was ratified by the stockholders of the canal company, and, upon the joint petition of the two companies, was approved by the State Land Board of Idaho, subsequent to which time the system was operated by the construction company until January 1, 1911, when the whole property was conveyed by the construction company to the canal company, since which time the latter has been in possession and control of it.

Pursuant to its obligation to maintain and operate it, and to meet the necessary expense thereof, the canal company, from time to time, pursuant to the provisions of the State contract, the settlers' contract, and the by-laws of the operating company, levied assessments upon the stock issued to the settlers, resulting in its sale for delinquency on many instances and its purchase by the canal company at such sales, which stock so purchased, amounting in the aggregate to 5,[illegible]3 shares, that company claims to own, together with the proportionate beneficial interest thereby [Ed. Sic] represented in the irrigation system, subject to the privilege of redemption under certain circumstances.

In some instances the Trustees in the present case foreclosed their lien provided for in the contracts upon the land and water stock and became the purchaser of both the land and the water right represented by the stock, and in other cases acquired the land and water right by deed directly from the settlers without suit.

The appellants sued as successors in interest of the original Trustees of the landholders. The defendant canal company claimed, both by its pleading and in evidence, that in maintaining and operating the irrigation system and in distributing its waters, it had levied each year upon its stockholders certain assessments upon the stock, and that in many instances the assessments were not paid and that such stock was sold for such assessment and acquired by the canal company. The real controversy between the respective parties is the relative priority of lien upon the water stock and the proportionate interest in the irrigation system represented by it. The decree appealed from awarded the canal company a prior lien upon various portions of the stock based upon unpaid assessments thereon,

aggregating $89,417.64. Those assessments the appellants claim to have been void, but we do not find it necessary to decide that question.

In the case of Twin Falls Salmon River Land & Water Co. vs. Caldwell (243 Fed. 177, 190), we said, among other things: "The construction of the system necessarily re- [fol. 532] quired the furnishing from some source of the money with which to do the work; the compensation to the construction company for the liability assumed by it in procuring the required money and in doing the work must of necessity come from the sale of the lands and of rights to the appropriated water; and of that fact both Congress and the state were, of course, well aware, as is shown by the legislation that has been referred to. In the execution of the project, the contract between the state and the construction company, and the contract between that company and the settlers, were made. Manifestly, they are to be read together and in connection with the statutes of Congress and of the state, to which the contracts expressly referred. The construction company, the settlers, and the parties who furnished the money for the building of the system, receiving as security therefor the liens authorized both by Congress and the state, are therefore, each and all, charged with full knowledge of the laws and of the provisions of the contracts." That is the law of this Court respecting such cases it never having been overruled or questioned so far as we know.

We must, therefore, take it that the appellees are bound by all of the provisions of the respective contracts and by all of the provisions of the Acts of Congress, and all of the provisions of the Acts of the State of Idaho upon the subject. Among the latter is section 3019 of the compiled statutes of Idaho, which reads as follows:

"Any person, company, or association furnishing water [fol. 533] for any tract of land shall have a first and prior lien on said water right and land upon which said water is used, for all deferred payments for said water right; said lien to be in all respects prior to any and all other liens created or attempted to be created by the owner and possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right

is fully paid and satisfied, according to the terms of the contract under which said water right was acquired."

The learned Judge of the court below held that that section of the Idaho statute is not applicable to the case, and even if applicable, was waived by the contract between the State and the construction company and by the articles of incorporation of the canal company, and by its by laws.

The first and main reason assigned by the trial Court in its opinion for such holding is, that the priority of liens thereby given to the person or company furnishing the water for the irrigation of the land is only over liens "created or attempted to be created by the owner and possessor" of such land.

We think that construction wholly inadmissible. The very purpose, if not the sole purpose, both of Congress and of the State in enacting the legislation in question, was the supplying of dry and practically valueless public land with water, thereby putting it under profitable cultivation—to do which extensive and expensive irrigating systems were obviously necessary, the money for which of necessity had [fol. 534] to be provided, and, if borrowed, had to be satisfactorily secured. Those who furnished the money were, in our opinion, obviously and necessarily the parties to whom the statute gave priority of lien, and in the nature of things necessarily had to do so, if the money was to be furnished. That such was the manifest intention of the statute is, we think, conclusively shown by its concluding clause, which declares: "Said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and satisfied, according to the terms of the contract under which said water right was acquired."

The intermediate clause: "Said lien to be in all respects prior to any and all other liens created or attempted to be created by the owner and possessor of said land, merely gives expression to what would otherwise be clearly the legal effect of the section.

Not only so, but the contract between the State and the construction company expressly declares: "That this contract is made and entered into by virtue of the provisions and subject to * * * the laws of the State of Idaho accepting the terms of the 'Carey Act' * * * and that such laws * * * are as much a part of this contract

as if specifically set forth." And section 8 of Article VIII of the by-laws of the canal company expressly declares that "all shares of this corporation shall be held subject to the rights of the Portneuf-Marsh Valley Irrigation Company, Limited, until the amount due to such company, its succes- [fol. 535] sors or assigns, shall have been fully and finally paid, as provided in the contract between said corporation and the purchasers of shares, and as provided in the contract between the said Portneuf-Marsh Valley Irrigation Company, Limited, and the State of Idaho."

We are of the opinion that, upon the case made by the record, the bondholders are legally and equitably entitled to a prior lien for the amount due thereon on the entire irrigation system in question and its waters, and upon the interest in the said system and waters represented by the stock acquired by and held in the treasury of the canal company.

The case is, accordingly, remanded with directions to the Court below to modify the decree in accordance with the views above expressed, and as so modified it will stand affirmed.

[File endorsement omitted.]

[fol. 536] In United States Circuit Court of Appeals

[Title omitted]

Appeal from the District Court of the United States for the District of Idaho, Eastern Division

Decree—Filed May 25, 1925

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the District of Idaho, Eastern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, modified, so as to provide that the bondholders are legally and equitably entitled to a prior lien for the amount due thereon

on the entire irrigation system in question and its waters, and upon the interest in the said system and waters represented by the stock acquired by and held in the treasury [fol. 537] of the canal company, with costs in favor of the Appellants and against the Appellees, and that this cause be, and hereby is remanded to the said District Court with directions to modify its decree in accordance with the views expressed in the opinion of this Court.

It is further ordered, adjudged and decreed by this Court, that the appellants recover against the appellees for their costs herein expended, and have execution therefor.

[File endorsement omitted.]

[fol. 538] In United States Circuit Court of Appeals

[Title omitted]

Order Denying Petition for Rehearing—October 19, 1925

On consideration of the petition of appellee Portneuf-Marsh Valley Canal Company, filed June 22, 1925, for a rehearing of the above-entitled cause, and of the answer of appellant to petition for rehearing, filed July 24, 1925, and of the reply of appellee to petition for rehearing, filed August 12, 1925, and good cause therefore appearing, and by direction of the Honorable Erskine M. Ross, William H. Hunt and Frank H. Rudkin, Circuit Judges, before whom the case was heard, it is ordered that the petition of appellee for rehearing be, and hereby is denied.

[fol. 539] In United States Circuit Court of Appeals

[Title omitted]

Order Staying Mandate—Filed November 6, 1925

Upon telegraphic application of Mr. D. C. McDougall, counsel for the appellees, and good cause therefor appearing, it is ordered that the issuance of mandate under Rule 32 of this Court in the above-entitled cause be, and hereby is stayed until the petition to be made on behalf of the ap-

pellees to the Supreme Court of the United States for the issuance of a writ of certiorari herein be disposed of, on condition that the said petition be docketed in the said Supreme Court on or before December 14, 1925.

Hunt, United States Circuit Judge.

Dated San Francisco, California, November 6, 1925.

[fol. 540] WESTERN UNION TELEGRAM

1925, Nov. 5—P. M. 4.47.

KHA288 49 NL Pocatello Ida 5. 388

F. D. Monckton, Clerk Circuit Court of Appeals, San Francisco, Calif.:

Attention Mr. O'Brien

Please print record in Brown vs. Portneuf Marsh Valley to be used with petition for writ of certiorari Will it be possible to secure 20 days additional stay for this purpose. Letter with draft $50 following Wire my expense if stay can be procured.

D. C. McDougall.

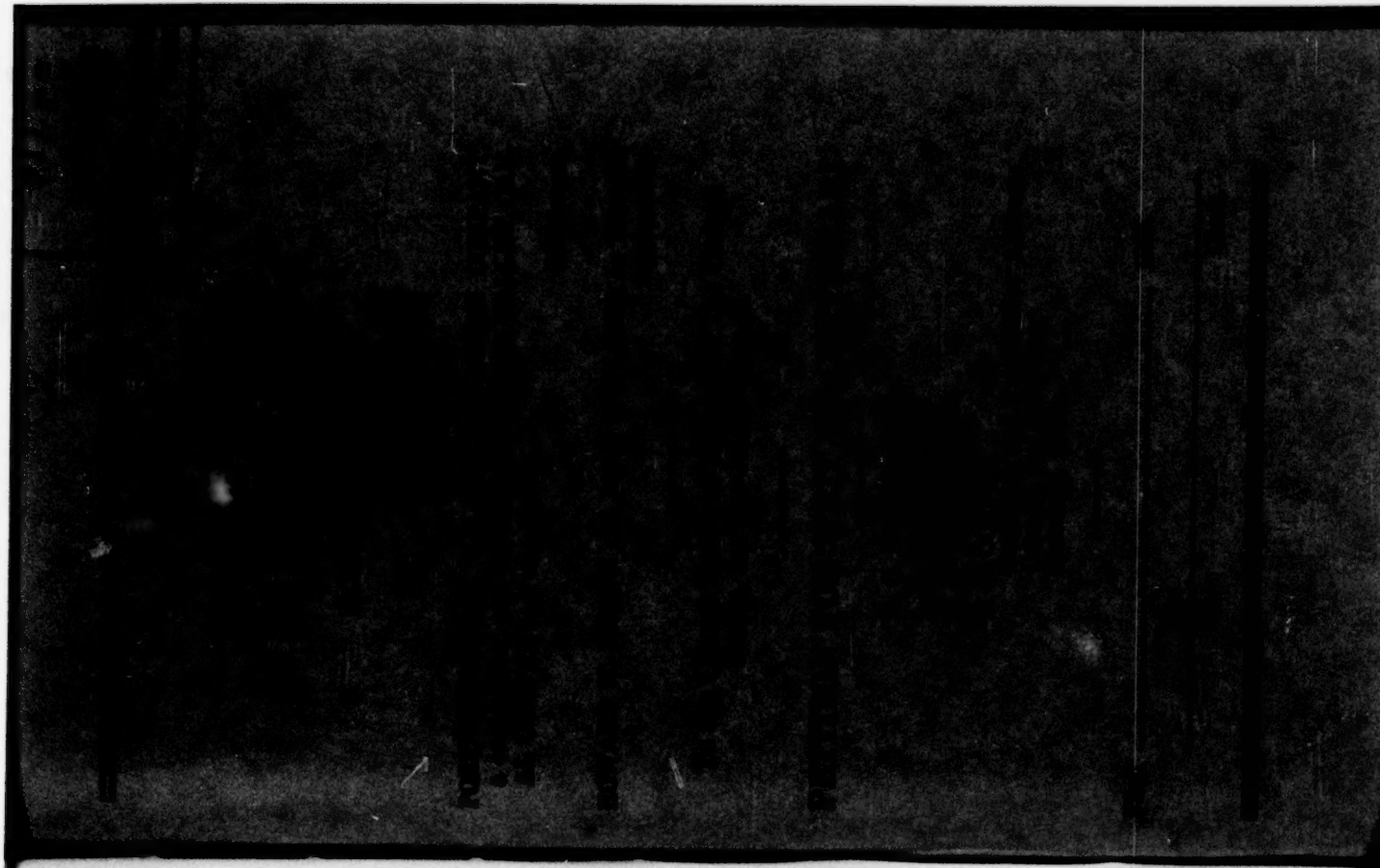
[File endorsement omitted.]

[fols. 541 & 542] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 543] IN SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 18, 1926

The petition herein for writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

No.

PORTNEUF-MARSH VALLEY IRRIGATION COMPANY, a corporation, and PORTNEUF-MARSH VALLEY CANAL COMPANY, a corporation,

Petitioners,

vs.

HOWARD W. BROWN and JOHN R. CHAPIN, as Trustees,

Respondents.

To the Circuit Court of Appeals of the United States, for the Ninth Circuit.

PETITION FOR WRIT OF CERTIORARI

D. C. McDOUGALL,
I. E. McDOUGALL,
H. O. McDOUGALL,
J. H. PETERSON,
T. C. COFFIN,

Residence and Post Office Address:
Counsel for Petitioner,
Pocatello, Idaho.

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Portneuf Marsh Valley Canal Company, a corporation organized and existing under and by virtue of the laws of the State of Idaho, respectfully presents to this court its Petition for a Writ of Certiorari addressed to the Circuit Court of Appeals of the United States, for the Ninth Circuit, commanding said Court and the clerk thereof, to certify to this Court the record and proceedings of the case in said Court, wherein your petitioner was appellee and the respondents, Howard W. Brown and John R. Chapin, as Trustees, were appellants, together with its opinion therein for the review and determination of said cause by this Court.

The reasons relied on for the issuance of said Writ and upon which your petitioner believes that a Writ ought to be issued, and which will be more fully stated hereafter, may be summarized as follows:

FIRST: The Circuit Court of Appeals of the United States for the Ninth Circuit has rendered a decision in this cause, touching an important question of local law in a way probably in conflict with applicable local decisions in this: The Circuit Court of Appeals of the United States for the Ninth Circuit has construed Section 3019 of the Idaho Compiled Statutes in a manner which is probably in conflict with the decision of the Supreme Court of the State of Idaho in the case of Continental & Commer-

cial Trust & Savings Bank v. Werner, 36 Idaho, 602; 215 Pac., 458.

SECOND: The Circuit Court of Appeals of the United States for the Ninth Circuit has decided an important question of general law in a way probably untenable and in conflict with the weight of authority in this: That the said Circuit Court of Appeals of the Ninth Circuit has held that a stockholder in a corporation can create a lien upon stock issued to him, superior to the lien of the assessments made on said stock by the corporation.

THIRD: In the interest of uniformity of decision in the Circuit Court of Appeals of the United States for the Ninth Circuit, in this: That in the cause here involved, the Circuit Court of Appeals of the United States for the Ninth Circuit has held, in effect, or has been aided in reaching its decision which is reported under the title of Brown, et al., v. Portneuf-Marsh Valley Irrigation Company, et al., 5 Fed. (2nd,) 895, that a lien is created by the so-called Carey Act, (Act of Congress, approved August 18th, 1894) and amendments thereof, and has held to the contrary, in effect, in a case in which the decision was rendered upon the same day, namely, Equitable Trust Company of New York, et al., v. Cassia County, et al., reported in 5 Fed. (2nd,) 853, which latter decision is in conformity with the decisions of the Supreme Court of the State of Idaho, the latest of which is Continental & Commercial Trust & Savings Bank v. Werner, et al., 36 Idaho, 602; 215 Pac., 458.

FOURTH: The Circuit Court of Appeals of the

United States for the Ninth Circuit has decided an important question of Federal Law which has not been, but should be, settled by this court, namely, the effect of the so-called Carey Act upon liens sought to be imposed under the state laws of the various states on properties included within Carey Act irrigation projects.

In this behalf, your petitioner states the following facts:

The controversy here grows out of a so-called Carey Act Irrigation project in Bannock County, Idaho. The primary question presented for decision is whether or not assessments levied by a Carey Act operating company for the necessary expense of maintaining and operating the irrigation system, upon stock issued pursuant to contracts of sale to settlers purchasing water rights, are valid as against and superior to the claim of the construction company and its assignees for deferred, unpaid installments on account of the purchase of water rights.

The project involved in this case consists of a reservoir on the headwaters of Portneuf River in Idaho and a system of canals for the diversion and distribution of the stored waters and natural flow of Portneuf River for the irrigation of a body of approximately fourteen thousand acres of land in Bannock County.

The project, in its history, is similar in all substantial respects to all Carey Act improvement projects. The promoters of the project initiated the same by obtaining from the State of Idaho a permit

to appropriate, store and sell certain waters of the Portneuf River shed. Thereupon, the State of Idaho, in the usual manner, made application to the Secretary of the Interior for the withdrawal from entry of public lands embraced within the proposed project; the State of Idaho contracted with the Secretary of the Interior for reclamation under the Carey Act of the lands thus withdrawn; the promoters of the project then organized the corporation which was to construct the project and which, in this instance, is the Portneuf Marsh Valley Irrigation Company. The water permits and rights acquired by the original promoters were then transferred to the construction company aforesaid. Thereupon, this construction company entered into a contract with the State of Idaho for the building of the irrigation works and storage works and obtained from the State of Idaho the exclusive privilege of selling water rights out of said system to settlers on the land involved, at stipulated prices.

For the purpose of obtaining funds to construct the system, the construction corporation executed a Trust Deed upon all its property and rights then owned or thereafter to be acquired, to secure an issue of bonds. By the sale of these bonds, money was to be procured to construct the system.

The land in the segregated areas was sold to settlers at the nominal price provided by the Carey Act, together with water rights in the irrigation system, for the irrigation of the land. The sales were made by contract, requiring a small cash payment down and the balance in deferred installments, the deferred installments being secured by a lien on the water right and the settler's land entry.

Th construction company pledged these contracts which it had with the settlers, with the trustees under the Trust Deed, to further secure he bond issue.

In the contract for the reclamation of the land which the construction company made with the State of Idaho, which is a part of the usual machinery for the building of such projects, it was provided that the construction company should cause to be formed an operating company. The operating company was to be a corporate organization, formed for the sole purpose of owning and managing the system and delivering water to the various settlers thereunder. Ultimately, all stock in the operating company was to be held by the settlers themselves. When contracts for the sale of water to settlers were made by the construction company, stock was to be issued to all settlers so contracting for water on the basis of one share for each acre of land owned by the settler and irrigated from the system, which share of stock would represent a proportionate interest in the entire irrigation system, including all water rights, reservoirs and canals. Stock in the operating company was to be delivered to the settlers at the time they made their contracts with the construction company and made their first payment, but was to be immediately assigned by the respective settlers to the construction company, and such stock was, by the construction company, pledged as additional security with the trustees under the Trust Deed. In this case, the operating company is the petitioner here, namely, the Portneuf Marsh Valley Canal Company.

The Portneuf Marsh Valley Irrigation Company,

the construction company, was organized with a capital stock of $500,000.00, consisting of five thousand shares of a par value of $100.00 per share. This construction company entered into a contract with the State of Idaho for the construction of the system, wherein the cost of the construction was estimated at $275,000.00. The system was to supply water for the irrigation of approximately twenty thousand acres of land and the construction company was authorized to sell water rights at a rate of $35.00 per acre for most of the land and $25.00 per acre for the balance. If an average of $30.00 per acre be assumed, the total possible return to the construction company from the sale of water rights alone would be $600,000.00 as against an estimated cost of $275,000.00 only.

The respondents here, who were the plaintiffs in the District Court for the District of Idaho, where the cause originated, are the successors in trust of the trustees named in the Trust Deed covering the system, which was executed by the construction company in October, 1909, to secure the payment of a contemplated bond issue of $300,000.00. The contract between the construction company and the State of Idaho for the construction of the system is dated June 3, 1908, and the contract between the State of Idaho and the United States, under the Carey Act is dated May 14th, 1908. At the time the Trust Deed was executed many water rights in the system had already been sold to settlers, and all of the water rights involved in this action were sold prior to the execution and delivery of the Trust Deed, and the contracts of the settlers with the construction company were recorded prior to that time.

In the course of the trial in the District Court in Idaho, the plaintiffs, who are respondents here, conceded that, in so far as the issue to be there decided was concerned, they, the plaintiffs, stood in the shoes of the construction company and had no greater rights than the construction company itself would have had. In the brief of the plaintiffs in the District Court, which is referred to in the Memorandum Decision of the Honorable F. S. Dietrich, District Judge, it was stated:

> "The only controverted issue presented for decision in this case is the relative priority of the lien of the Portneuf Marsh Valley Irrigation Company Limited (this company, we have heretofore in this statement designated as the construction company) for the purchase price of its water rights as against the lien of the Portneuf Marsh Valley Canal Company, a Carey Act settlers' operating company, by reason of assessments for maintenance."

In Article One of the Trust Deed, for the foreclosure of which the plaintiffs instituted this action, there is an express provision to the effect that, so long as the construction company is not in default, it:

> *"May sell and may exchange for other property, free of the lien hereof, water and water rights to bona fide purchasers thereof and receive and collect the proceeds of such sales and trades precisely as if this mortgage had not been made."*

There is no allegation in the pleadings and no proof in the record of any existing defaults when any of the water rights involved in this action were sold. The trustees, who are the respondents here,

hold in pledge for the payment of bonds, numerous settlers' contracts for the purchase of water rights, upon which deferred installments of the purchase price are still due. This is in accordance with the provisions of the Trust Deed, requiring that at all times the trustees must have in their possession such contracts or other securities to the amount, in face value, of one hundred fifty per cent of the outstanding bonds. In this action the respondents, as trustees, have sought to foreclose the Trust Deed for default in the payment of the bonds and no question is made by either of the defendants of the right to foreclose for the total amount remaining due upon the bonds.

One of the defendants, the construction company, namely, the Portneuf Marsh Valley Irrigation Company, by which the Trust Deed and the bonds were executed, is insolvent and makes no defense. The other defendant is the Portneuf Marsh Valley Canal Company, which in Carey Act practice, under the laws of Idaho, is known as the operating company. This corporation is provided for in the contract between the construction company and the State of Idaho and reference to it is made in the Trust Deed, it being intended as a convenient entity by which the legal title to the irrigation system is permanently held and by which it is maintained and operated. Its capital stock consists of a number of shares equal to the number of acres to be irrigated, the shares being of the nominal value of $1.00 each. Instead of deeding to each purchaser or settler a water right to the amount of water that he actually purchases, the construction company deeded the entire system to the operating company and the operating com-

pany then issued its stock to the settlers on the basis of one share for each acre of water right actually purchased. In that way the operating company took over the system and the operating company was managed and controlled by directors, elected as in ordinary corporations. It will be noted that the only property owned by the operating corporation was the irrigation system, from which no revenue whatever was derived, and the only means of caring for the expense of maintaining and operating the system was by assessments against water users in the system, which, in this instance, was by assessments upon stockholders in the operating company.

In conformity with the general practice in cases such as this, and pursuant to the express provision of its contract with the State of Idaho, the construction company organized the operating company, the petitioner here, with a capital stock of twenty thousand shares. One step in the organization of the operating company was the preparation and acceptance of an elaborate set of by-laws. The irrigation system was, by the construction company here, deeded to the operating company, with certain stipulations agreed to by both companies. The stock of the operating company was issued to the several holders of water contracts in proportion to their holdings, subject to a lien for the unpaid purchase price as provided by the State of Idaho contract and the settlers' contracts, and the balance of stock which the construction company had not sold was held by it. By a subsequent agreement with the settlers, this stock held by the construction company

until sold to settlers, was not chargeable with the burdens of maintenance and operation.

While, originally, the irrigation of twenty thousand acres was contemplated, the plan was later modified and the acreage cut to fourteen thousand acres. Of this area, the promoting or construction company succeeded in selling rights for only twelve thousand two hundred forty acres. Of the fourteen thousand shares of stock in the operating company, authorized to be issued, the construction company continued to hold, and now holds one thousand, seven hundred sixty shares, which represent a proportionate interest in the irrigation system. As to these shares and the beneficial interest in the system which they represent, there is no controversy, and the petitioner here concedes that by foreclosure and sale, the purchaser will succeed to and will acquire the interest of the construction company. On the other hand, the respondents here, who were plaintiffs in the original action, concede that by foreclosure and sale, neither they nor the purchaser will acquire anything in respect to shares of stock held by settlers who have fully paid for their water rights, or in respect to the beneficial interest in the system represented by such stock. The concession of the plaintiffs goes also to stock held by settlers for water rights not fully paid for, but in respect to which there is no default, and concerning this stock, it is not disputed that the plaintiffs will get nothing other than rights possessed by the construction company and its assignees, namely, to receive installments as they become due and are paid.

Upon taking over the irrigation system, the oper-

ating company, the petitioner here, was under obligation to maintain and operate. To meet the expense of such operation it, from time to time as there was need, levied assessments upon the stock issued to settlers, all pursuant to the provisions of the contract with the State of Idaho, the settlers' contracts and the by-laws, all of which were prepared by and, in effect, adopted by the construction company. Upon default in the payment of the assessments thus levied by the operating company, the delinquency of the particular stockholders or settlers was advertised and the stock of these settlers was offered for sale, pursuant to notice. There being no other bidders, the operating company purchased the delinquent stock for the amount of the assessment, plus interest and penalties. A by-law of the operating company, or a resolution of the Board of Directors, provided that stock so purchased by the operating company should be held by the company with the privilege to the original holder, or his assigns, to redeem it by paying the amount for which it was sold, together with interest and all subsequent assessments and interest thereon. This stock, aggregating 5495.2 shares, the petitioner (the operating company) now claims to own, together with the proportionate beneficial interest represented by them in the system, subject, however, to the privilege of redemption just explained. In all such cases, the settlers also defaulted in the payment of the installments due upon their water contracts with the construction company, which contracts were held in pledge by the plaintiffs, who are respondents here, as trustees. In some instances the trustees foreclosed the lien provided for in these contracts upon the land and water stock and became the purchaser

of both the land and water right represented by the stock, and in other cases, for a small consideration, they acquired the land and water right by deed directly from the settler, without suit. The respondents here, who were plaintiffs below, as trustees under the Trust Deed, assert that their rights to the stock here involved, namely, 5495.2 shares, are paramount to the rights of the operating company which purchased the stock on account of delinquent assessments for maintenance. The operating company which is the petitioner here, asserts that by purchasing the shares of stock at sales held because of the non-payment of assessments levied as heretofore explained, it acquired the paramount right to the stock, free of all liens and subject only to the privilege of the original holder of the stock, or his assigns, which in this instance would be the trustees, to redeem the stock by paying the amount for which the stock was sold, together with interest and all subsequent assessments and interest thereon. These two claims present the issue which your petitioner asserts was erroneously decided by the Circuit Court of Appeals for the Ninth Circuit. The issue is thus stated by counsel for respondents and referred to by the learned trial judge, the Honorable F. S. Dietrich:

> "The only controverted issue presented for decision in this case is the relative priority of the lien of the Portneuf Marsh Valley Irrigation Company Limited (the construction company) for the purchase price of its water rights as against the lien of the Portneuf Marsh Valley Canal Company, a Carey Act settlers' operating company, by reason of assessments for maintenance."

This issue presents itself without dispute for the

reason that all parties to the cause have agreed that the respondents here, as plaintiffs, stand in the shoes of the construction company and have no greater rights.

The Articles of Incorporation of the Portneuf Marsh Valley Canal Company, which company was organized by the Portneuf Marsh Valley Irrigation Company, the construction company, to take over the ownership and operation of the irrigation system, provide that this operating company shall have the power to operate and maintain said irrigation system and works as the same shall be completed and turned over to it during the period of construction and subsequent thereto, and to levy and collect tolls, charges and assessments for the carrying on and maintaining of said irrigation system and management and operation thereof. This company was formed prior to the time that any of the contracts with settlers, affected by this action, were entered into.

The by-laws of the Portneuf Marsh Valley Canal Company, the adoption of which by the company, under the Idaho laws, was a prerequisite to its organization and which likewise were adopted prior to the making of any contracts with settlers whose stock is involved in this action, provide that, for the purpose of defraying expenses of the company of whatsoever kind, and paying the cost of maintaining, managing and operating said canal system, the Board of Directors of the company are authorized and directed to levy such tax or taxes, charge or charges, assessment or assessments, as in the judgment of the board may appear necessary or proper

to raise the money or revenue required. They further provide that all such expenses, taxes, costs and charges shall be apportioned among all the stock issued by the company, which has been applied and made appurtenant to land, but no such assessment or tax shall be levied against shares which have been issued to or are held for the benefit or in the interest of the Portneuf Marsh Valley Irrigation Company Limited and which has not been sold or made appurtenant to land. The taxes or assessments so provided for shall be levied against the owners of the shares of stock applied or made appurtenant to land, regardless of whether water has been used for irrigation purposes by the holder of said stock. The by-laws in the following section provide that in addition to the method just mentioned for the raising of the revenue and money, the directors may levy assessments upon the stock of the corporation as provided by the laws of the State of Idaho for the levying of assessments upon corporate stock.

The contracts for the purchase of water between the construction company and the settlers provided, among other things, that the construction company would cause to be formed the said operating company and that the operating company was to have power to levy all taxes, tolls, charges and assessments upon all users of water *in proportion to the respective holdings of stock, whether water was used or not*, and further provided on behalf of the purchaser that he, the said purchaser would pay such charges in advance at the office of the said operating company on the first day of April of each year, without notice.

In the course of the trial, counsel for the trustees, the plaintiffs herein, made the following statement with respect to the assessments levied and at issue here:

> "I think it may be admitted that the assessments as levied were not excessive but reasonably necessary in the operation and maintenance and improvement of the canal system, and further that the money so raised was used for the reasonable and necessary expenses of the company in the operation and management of the irrigation ditch."

The plaintiffs in the trial, assuming as they did the priority of the liens which they sought to foreclose, conceded through their counsel:

> "That neither the plaintiffs, nor anybody in their behalf, have ever tendered any payment on the amount of assessment."

Your petitioner is advised that the decision of the United States Circuit Court of Appeals for the Ninth Circuit is final and is erroneous, and that the same is not reviewable by a writ of error, and this Honorable Court should require the case to be certified to it for its review and determination.

Your petitioner, in the brief accompanying this petition, will more particularly elaborate upon the foregoing questions.

Your petitioner presents herewith a certified copy of the entire record in said cause, including the proceedings in the Circuit Court of Appeals for the Ninth Circuit, and the opinion of the said court.

WHEREFORE, Your petitioner prays that a writ of certiorari be issued under the seal of this Court, directed to the Circuit Court of Appeals of the United States for the Ninth Circuit, sitting at San Francisco, California, commanding the said court to certify to and send to this court, on day to be designated, a full and complete transcript of the record and all proceedings of the said United States Circuit Court of Appeals for the Ninth Circuit had in said cause, to the end that said cause may be reviewed and determined by this Honorable Court as provided by law, and that the said judgment of the Circuit Court of Appeals of the United States for the Ninth Circuit, be reversed by this Honorable Court, and for such other and further relief as may seem proper, and your petitioner will ever pray.

Your petitioner respectfully submits the following brief in amplification of its petition:

The apparent complications in the situation presented by the Petition for the Writ are susceptible of being resolved into a single clear-cut issue. That issue is the priority of what may be termed a construction lien and a maintenance lien. Both liens, necessarily, result from the method provided for the reclamation of arid lands under the Carey Act, and if we can define the two liens, we can then hope to be able to state the issue with sufficient clarity to make possible its easy solution.

To determine the nature of the two liens, we must have recourse to the legislation upon the subject. With respect to the lien claimed by the respondents here, who as trustees under the trust deed, sought

to foreclose a mortgage in the lower court, we submit the following as justified hypotheses:

FIRST: The Carey Act (Act of Congress approved August 18th, 1894, 28 Statutes at Large, 372,422, and amendments thereto) is an enabling act conferring upon the states availing themselves of its terms the authority to create liens, upon land reclaimed, for the actual cost of reclamation. It does, not, itself, create any lien, and by its terms, as we read it, specifically disclaims the intention to create any liens. Continental & Commercial Trust & Savings Bank v. Werner, 36 Idaho, 602; 215 Pac., 459. Equitable Trust Company of New York v. Cassia County, 5 Fed. (2nd) 955.

SECOND: Section 3019 of the Idaho Compiled Statutes creates a lien in favor of the person, company or association contracting with the state for the reclamation of such lands. As we shall hereafter demonstrate, this section refers to the lien which the trustees, under the bond issue here, have sought to enforce, but it does not affect the lien which the petitioner here asserts is the paramount lien. That section provides as follows:

> Any person, company or association, furnishing water for any tract of land, shall have a first and prior lien on said water right and land upon which said water is used, for all deferred payments for said water right; said lien to be in all respects prior to any and all other liens created or attempted to be created by the owner and possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and

satisfied according to the terms of the contract under which said water right was required.

THIRD: The contract between the State of Idaho and the construction company, the Portneuf-Marsh Valley Irrigation Company, entered into on June 3, 1908, provided, among other things, that the construction company should sell or cause to be sold to the person or persons filing upon any of the lands in said contract described, or to the owners of other lands not therein described but which were susceptible of irrigation from the proposed canal system, by good and sufficient contract of sale, with right of possession and enjoyment by the purchaser pending its fulfillment, a water right or share in said canal for each and every acre filed upon or purchased from the state or acquired from the United States. The contract provided that these water righs should be sold a a price not to exceed $35.00 per share, to be payable $3.00 per share down and the remainder in nine equal annual installments, bearing interest at the rate of six per cent per annum. The contract between the state and the construction company also provided that, because of the necessity of transferring the ownership and control of the canal and irrigation works from the construction company to the purchasers of water rights, and because of the necessity of operating and maintaining said canal during the period of construction and afterwards, and because of the necessity of levying and collecting tolls, charges and assessments for the management and operation of the said canal, an operating company should be formed. Stock in the operating company should be issued to purchasers of water at the time they purchased the water, at the ratio of one share

of stock for each acre of water right purchased, which stock should be by the construction company delivered to the purchaser and by the purchaser assigned to the construction company to be held by it until thirty-five per cent of the purchase price of the stock had been paid.

The contract with the State of Idaho further permitted the construction company to mortgage the irrigation system and the lands, to secure funds to construct the same.

FOURTH: The contract made and entered into between the construction company and the purchasers of water rights, among other things, provided that the construction company would cause to be formed an operating company and that the operating company was to have power to levy all taxes, tolls, charges and assessments as might be necessary to operate and maintain the system, upon all users of water in proportion to their respective holdings of stock, whether water was used or not.

FIFTH: The Articles of Incorporation of the operating company, the petitioner here, provided that the operating company should have the power to operate and maintain the irrigation system and works and to levy and collect tolls, charges and assessments for the maintenance and operation thereof.

SIXTH: The by-laws of the operating company provided that, for the purpose of defraying expenses of the company of whatsoever kind, and of paying the cost of maintenance, management and operation

of the canal system, the board of directors of the company were authorized to levy such tax or taxes, charge or charges, assessment or assessments, as in the judgment of the board might be necessary, but that no charge or assessment of any kind should be levied against shares of stock which had been issued to, or were held for the benefit of, or in the interest of the Portneuf-Marsh Valley Irrigation Company, and which had not been sold or made appurtenant to land. These by-laws also empowered the directors to raise the necessary revenue by levying upon the outstanding stock which had been made appurtenant to land, in the same manner that assessments are levied upon the stock of other corporations in Idaho.

SEVENTH: The trust deed, under which the respondent trustees here claim, in its first Article provided that so long as the construction company was not in default it might sell and might exchange for other property, free of the lien of the trust deed, water and water rights to bona fide purchasers thereof and receive and collect the proceeds of such sales and trades precisely as if the mortgage had not been made.

It is material here to direct attention to the fact that the trust deed was executed and delivered subsequent to all of the other matters just mentioned. With respect to all the other matters just mentioned, the record had been made and notice thereof must be presumed to all interested parties at the time the trust deed was made and executed. It is also of material importance to note that with respect to all the water rights involved in this action, there is in the record neither allegation nor proof of any default on the part of the construction company prior to the time that the water rights were sold.

The water rights here involved represented by 5495.2 shares of stock in the Portneuf-Marsh Valley Canal Company are asserted by the respondent trustees to be held by them as a pledge, free and clear of all liens, for maintenance and operation of the canal system during the time they were held in pledge and subject to the payment, prior to all other liens, of the amount remaining due on the water contracts of the settlers to whom the stock was issued.

We submit it as a proposition which is self-evident that a stockholder in a corporation cannot assign his stock so as to free it from the obligation of paying all assessments lawfully levied against it by the corporation. Unless we are incorrect in the foregoing premise, there remain but two theories upon which the trustees here could assert a priority of lien upon the stock for the unpaid balance on the settlers' contracts: *First*, that the Carey Act, in and of itself, created some lien; and *second*, that Section 3019 of the Idaho Compiled Statutes of the State of Idaho created the lien.

As to the first theory, we submit the decision of the Circuit Court of Appeals of the Ninth Circuit in the case of Equitable Trust Company v. Cassia County, *supra*. If the Circuit Court of Appeals for the Ninth Circuit is correct in the Equitable Trust Company case, then no lien can be asserted under the Carey Act.

As to the second of the above theories, the Supreme Court of the State of Idaho has construed Section 3019 in the case of Continental & Commercial Trust & Savings Bank v. Werner, 36 Idaho, 602; 215 Pac., 459, and by analogy has held that the lien here asserted by the petitioners is not affected by that section. In this respect we submit also the decision of the Honorable F. S. Dietrich, District Judge, in the instant case, his decision appearing in the record at Pages 424 to 449

Whether the petitioner is correct or incorrect in the position necessarily assumed in presenting its Petition for a Writ of Certiorari, the following matters would seem to call for the exercise of the supervisory powers of this Court: First: There is an apparent direct conflict in the decisions of the Circuit Court of Appeals for the Ninth Circuit in the two cases of Brown, et al., v. Portneuf-Marsh Valley Irrigation Company, 5 Fed. (2nd) 896, and Equitable Trust Company v. Cassia County, 5 Fed. (2nd) 955, the original opinions in both of which were handed down on May 25, 1925. Second: There is an apparent direct conflict between the Circuit Court of Appeals of the Ninth Circuit in its decision in this case and the Supreme Court of the State of Idaho in its decision in the case of Continental & Commer-

cial Trust & Savings Bank v. Werner, 36 Idaho, 602; 215 Pac., 459, with respect to the interpretation of the Compiled Statutes, Section 3019, of the State of Idaho.

It is respectfully submitted that the Writ should issue.

D. C. McDOUGALL.

T. E. McDOUGALL.

H. O. McDOUGALL.

J. H. PETERSON.

T. C. COFFIN.

Counsel for Petitioner,
Residence and Post Office Address,
Pocatello, Idaho.

STATE OF IDAHO, } ss.
County of Bannock. }

D. C. McDougall, J. H. Peterson and T. C. Coffin, being first severally sworn upon oath, depose and say, each for himself and not one for the other:

That he is one of counsel for the petitioner, Portneuf-Marsh Valley Canal Company; That he has read the above and foregoing annexed Petition and knows well the contents thereof; That he has also carefully read and studied a certified copy of the Transcript of the Record which accompanies the Petition herein, being the Transcript of the Record in the case at bar; That the matters in said Petition are, in the judgment of this affiant, duly supported

in and by said Transcript of the Record, and that he knows of the above proceedings had and that the facts in said Petition herein stated are true to the best of his knowledge and belief.

D. C. McDOUGALL.

J. H. PETERSON

T. C. COFFIN

Subscribed and sworn to before me this 4th day of December, 1925.

E. REBECCA HAYS

(Notarial Seal) Notary Public.
Residence: Pocatello, Idaho.
My Commission expires October 30th, 1927.

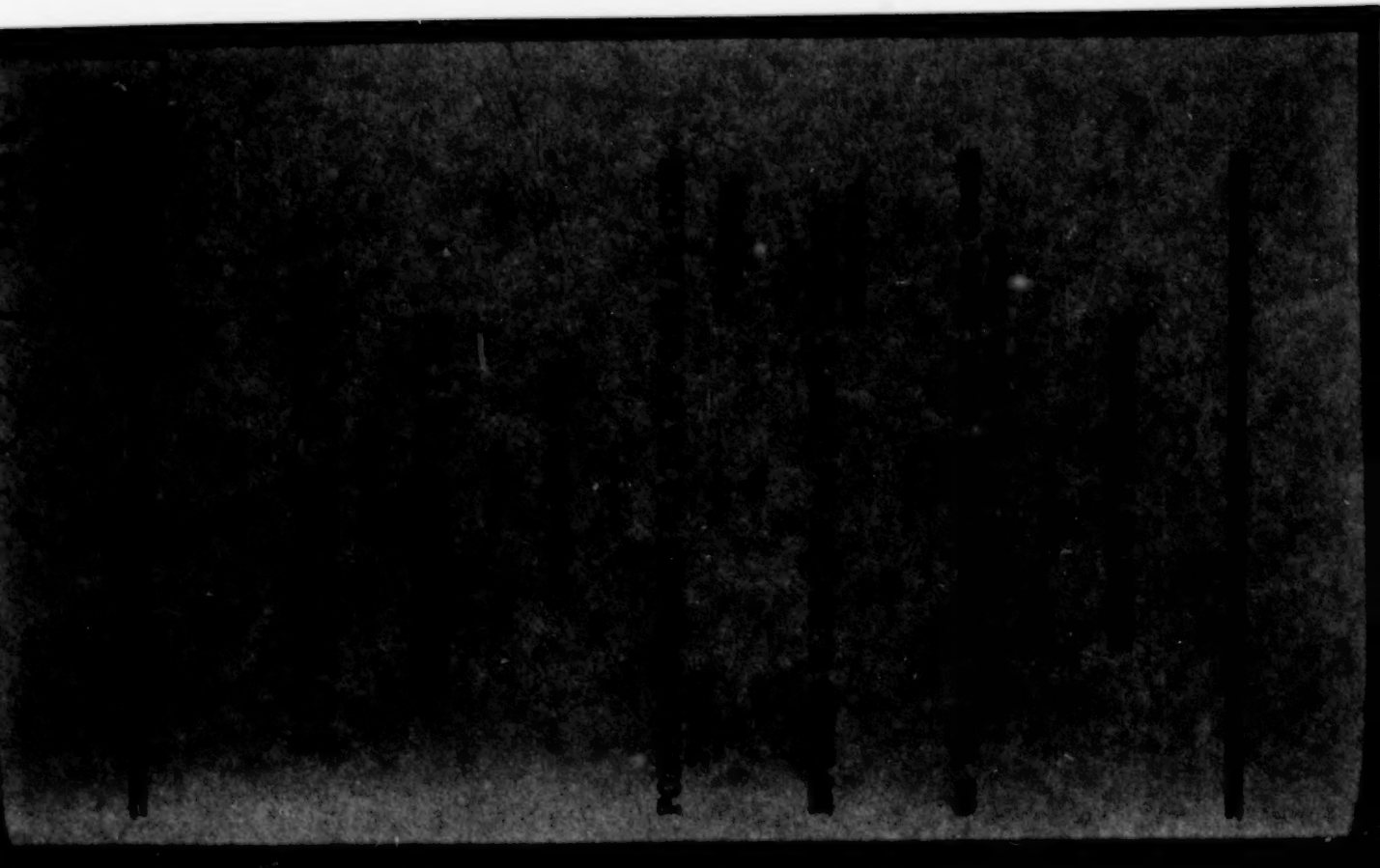
We do hereby certify that we have carefully examined the foregoing Petition for a Writ of Certiorari and that the allegations thereof are true, as we verily believe, and in our opinion, the Petition is well founded and the case is one in which the prayer of the Petition should be granted by this Court.

D. C. McDOUGALL

J. H. PETERSON

T. C. COFFIN

Counsel for Petitioner,
Residence and Post Office Address,
Pocatello, Idaho.



Names and Addresses of Counsel for Petitioner.

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No. 252.

SUPREME COURT
OF THE
UNITED STATES

October Term 1926.

PORTNEUF-MARSH VALLEY CANAL COMPANY,

Petitioner,

vs.

HOWARD W. BROWN and JOHN R. CHAPIN, as Trustees.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF OF PETITIONER

No. 252.

SUPREME COURT
OF THE
UNITED STATES

October Term 1926.

PORTNEUF-MARSH VALLEY CANAL COMPANY,

Petitioner,

vs.

HOWARD W. BROWN and JOHN R. CHAPIN, as Trustees.

BRIEF OF PETITIONER.

The writ has been granted by this court to review the decision of the Circuit Court of Appeals for the Ninth Circuit in the case of Brown v. Portneuf-Marsh Valley Irrigation Company, 5 Fed. (2nd) 895. The opinion of the Circuit Court of Appeals appears in the record beginning at page 350, and the decree of that court is at page 358. The decree of the Circuit Court of Appeals reversed the District Court for the District of Idaho on the only issue here involved, the opinion of which latter court is reported in 299 Fed. 338. (R. 295-314) The decree of the District Court for the District of Idaho appears in the record at pages 315-344. The particular portion of the decree of the District Court in Idaho which is in issue here is paragraph six at pages 337-339 of the record.

JURISDICTION OF THIS COURT.

The writ of certiorari has been granted by this court under the provisions of Section 240 of the Judicial Code (U. S. C. 347).

STATEMENT OF THE CASE.

Howard R. Brown and John R. Chapin as trustees instituted this action in the District Court of the United States for the District of Idaho, Eastern Division, to foreclose a deed of trust upon an irrigation system and its appurtenant water rights and properties in Bannock County, Idaho. Decree of the trial court was entered June 26th, 1924, (R. 315) by which foreclosure was ordered as sought by the trustees, with the provision in the decree, however, that the defendant, who is the petitioner here, Portneuf-Marsh Valley Canal Company, had a lien paramount to the lien of the trustees on some 5495.2 shares of stock of the Portneuf-Marsh Valley Canal Company, the petitioner, which owned the irrigation system and water rights. (R. 337) The claim of the Portneuf-Marsh Valley Canal Company which was thus granted priority, amounted, at the date of the decree, to $89,417.64, and represented unpaid assessments levied against the stock for maintenance and operation of the irrigation system, together with interest on such amounts.

The trustees, Brown and Chapin, prosecuted an appeal to the Circuit Court of Appeals for the Ninth Circuit from the portion of the lower court's decree establishing this priority of lien, and it was

upon this issue that the Circuit Court of Appeals reversed the lower court. To clarify the issue, a brief summary of the framework which has been erected to carry out the purposes of the so-called Carey Act (Act of Congress of Aug. 18th, 1894, 28 State. at Large, 372, 422, and amendments thereto) is necessary.

The Carey Act, in effect, provides that whenever it is deemed feasible to provide for the irrigation, by artificial means, of otherwise arid land in the Western states, the respective states may request of the Interior Department of the United States the withdrawal of certain specified areas from entry under the public land laws, and that after the Interior Department has made the order of withdrawal the states may provide for the irrigation of the lands included in such areas and that sales of the land can be made only to purchasers of water under the system which is to be constructed, the land itself to be sold at such a price as to make the water the real consideration for the purchase. The Carey Act also provides that, contrary to the law as it otherwise existed, liens may be created upon the land, prior to issuance of patent, for the cost of constructing the water works and distributing systems.

In making available these privileges, it has usually followed that a company of promoters has "discovered" the feasibility of some irrigation project which combined the two features of, *first*, sufficient unappropriated public land in a contiguous body to justify the building of an irrigation system, and, *second*,

an available supply of unappropriated water which, at what appears to be a justifiable cost, can be delivered upon the land in question.

The "discovery" having been made, the promoters take the matter up with the administrative board of the State in which the land is located, which has charge of such matters. The board is persuaded to petition the United States, through the Interior Department, for a withdrawal of the lands from entry. Simultaneously with thus petitioning the board, or prior thereto, the promoters file upon the water which is to be used to irrigate the tract and obtain a permit for its appropriation under the State laws. The permit contains provisions for the construction of the works over such a period as makes it possible to comply therewith at the same time that the provisions of the Carey Act with relation to the bringing of the land under irrigation are being complied with.

The order of withdrawal is next made by the Department of the Interior, and thereupon the State enters into a contract with the United States whereby the United States agrees to issue patent to the State to the land in question upon the making of certain proof in the future showing that the water is available for each tract of land in the area in question, and that the system has been built to place the water on the land. The contract between the United States and the State also provides that the land will be sold at the price of fifty cents per acre to entrymen qualifying to carry out the purposes of the Act, and who at the same time purchase

from the builders of the irrigation system the water that is to be applied to the land.

Immediately upon the contract between the State and the United States of America being entered into, the promoters enter into a contract with the State by which the promoters agree to build the irrigation system and supply water to the land, and by which the promoters are given the exclusive right to sell water within the project. It is therein provided that entries thereunder will be restricted to purchasers of water.

The motives of the promoters, admirable though their purposes may be, are not altruistic. The measure of their contemplated profits is the difference between the actual cost of constructing the system and the total amount at which water can be sold to the settlers. While a limit is placed upon such a profit by the State in its contract with the promoters, in that it fixes the maximum amount at which water rights can be sold and the maximum amount of water that can be sold, it is, nevertheless, true that a very substantial margin exists, and must exist, between the contemplated cost of constructing the system and the amount to be realized from sales of water

Ordinarily the promoters are individuals, and as soon as their contract with the State has been entered into, all their rights under the contract, as well as their permit to appropriate water under the laws of the State, are transferred to a com-

pany which they form for the purpose of constructing the system.

The company which is formed for this purpose is also the company which has the authority to sell water rights to settlers. This situation of itself provides the means by which finances are obtained to construct the system. The land is thrown open to entry, and the settlers who colonize it each enter into a contract with the construction company to purchase water at a specified price per acre, with a payment down and the balance in annual installments extending over a period of years, and at the same time the settlers make entry upon the land itself through the state administrative board having charge of it. The construction company is then in a position to hypothecate as security the contracts of the settlers, all of which contracts provide for security for the unpaid installments of the contract price in some particular form. The construction company, thereupon, by the use of such contracts as security, issues bonds in an amount sufficient to construct the system.

As the system for the conveyance of water, including the water rights, is ultimately to belong to the settlers themselves, and the respective water rights are to be made appurtenant to the respective parcels of land within the project, it is apparent that a means must be provided whereby upon completion of the system and payment by the settlers of the purchase price of their various water rights, the irrigation system, as an entity, will be turned over to the settlers and ownership of the system, that is,

the water rights, the diversion and distributing works, and any storage facilities, be vested in the settlers.

For the purpose of facilitating this last mentioned transfer it is usually provided in the original contract between the promoters and the State that a corporation shall be formed to act as the "operating" company. As and when land is entered on such a project by a settler and a contract is signed between the settler and the construction company for the purchase of water and the payment therefor either in cash or in installments, the settler is also issued his proportionate amount of stock in the operating company. The stock is usually placed with the construction company as additional security for the payment of the balance due on the settlers' contracts with the construction company or placed in escrow to be delivered upon the payment by the settler of the amount due on his contract for the purchase of water, or some specified percentage thereof. In working out it necessarily follows that as the settler pays for his water, his stock in the operating company is delivered to him.

The contract between the promoters and the State in the first instance, provides that the title to the irrigation system and water rights shall be by the construction company actually vested in the operating company, to the end that the stock issued to the settlers, or for the issuance of which provision is made, shall actually carry with it a proportionate ownership in the physical works themselves and in the water rights of the construction company.

The construction company in obtaining funds necessary to build the system pledges the various contracts which it has with settlers, all of which contracts, as stated, are secured by the water and the land of the settler, and makes such provision in the trust deed with respect to the stock in the operating company so as to protect the pledges of the contracts therein.

Where the conditions are ideal at the inception of such an undertaking and remain ideal throughout, matters such as the present case presents do not arise. There are present, unfortunately, all the elements which experience has taught us lead to difficulties in promotions. However careful the promoters may have been, they invariably encounter unexpected difficulties in construction of the system. These lead to increased cost and delays in the delivery of water. It is generally discovered that the water supply itself is insufficient or that transit and evaporation losses between the point of diversion and the point of application to the land are greater than were anticipated. These lead to inadequate water deliveries to the various settlers and the consequent failure of the crops of the settlers. Difficulties are encountered in colonization, and the settlers themselves are unable to place their land in shape for cultivation within the time contemplated in their contracts, with the result that income from the land of the settler is delayed. All, or part, of these causes, together with bad crop years, or failure, on the part of the settlers to provide themselves with a sufficient sum of money at the outset to keep the payments on their contracts up, lead to de-

faults on the part of the settlers. The payments are not made in accordance with their contracts, and since the times of payments on their contracts generally bear a very close relationship to the maturing obligations of the construction company, the defaults of the settlers lead to defaults by the construction company in the payment of interest or principal on the bonds.

During the period of construction of the canal and for a few years thereafter discontent among the settlers on the project grows, and it is ordinarily necessary to reorganize the entire project sometime later. In the reorganization the holders of the bonds, scured by the trust deed, who have a direct lien upon all the contracts of the settlers and the water stock in the operating company, are necessary and important parties, and in fact are generally the parties at whose instance reorganization takes place. The reorganization will ordinarily result in a cutting down of the acreage of the land to be irrigated and a corresponding cut in the amount of water which can be sold. Provision is also made for deferring of the payments due from the settlers for the water. When reorganization takes place, the net result is a loss of ultimate profits to the promoters, as ordinarily the project is still able on the original basis to provide sufficient funds to retire the bonds.

The foregoing, in a very general way, outlines the relationship of the various parties who are concerned here. The petitioner, the Portneuf-Marsh

Valley Canal Company, is the "operating" company. The Portneuf-Marsh Valley Irrigation Company which was a party to the original action, is the "construction" company.

In the instant case, the contract between the State of Idaho and the United States of America for the withdrawal of lands within the Portneuf-Marsh Valley Irrigation project was made on May 14th, 1908. (R. 38) The promoters of the project were H. O. Harkness and others, and they entered into their contract with the State of Idaho June 3rd, 1908. (R. 38) The promoters of the project duly assigned their rights to the Portneuf-Marsh Valley Irrigation Company shortly thereafter. (R. 38) In the contract which the promoters had with the State of Idaho it was provided (R. 259):

> "Transfer of Possession and Management of Canal. It being necessary to provide a convenient method of transferring the ownership and control of said canal and irrigation works from the said party of the second part and for determining their rights among themselves and between said purchasers and the party of the second part herein and for the purpose of operation and maintaining said canal during the period of construction and afterwards and for the purpose of levying and collecting tolls, charges and assessments for managing said canal and for the management and operation thereof it is hereby provided that as soon as said lands are ordered thrown open for settlement, a corporation to be known as the Portneuf-Marsh Valley (*Canal*) Company, Limited, shall be formed at the expense of the party of the second part, the Articles

of Incorporation of said company, to be approved by the Attorney General of the State of Idaho; that the authorized capital of said corporation shall be twenty thousand (20,000) shares, which amount is intended to represent one share for each acre of land which may hereafter be irrigated from said canal. All persons, who prior to the formation of such corporation, have purchased or acquired water rights of water from said second party for the irrigation of lands embraced in this contract and being then the owners of such rights or shares, shall be entitled to receive and have issued to them, shares in such corporation so to be formed, equal in number to the water rights or shares of water then owned and held by such persons and the remainder of the capital stock of such corporation shall be issued to the party of the second part in consideration of the covenants and agreements herein contained in order to enable it to deliver to purchasers of water rights the shares of stock representing the same. Said shares of stock, however, shall have no voting power and shall be without force or effect until they have been sold or contracted to be sold to the purchasers of land under said irrigation works.

At the time of the purchase of any water right after the formation of said corporation, there shall be issued to the purchaser thereof, one share of capital stock of said corporation for each acre of land entered or filed upon. That the said party of the second part herein shall, in case said water rights or shares of stock are not fully paid for, require the endorsement and delivery to it of said stock and shall at the same time require of said purchaser an agreement that until thirty-five per cent

(35%) of the purchase price of said stock has been paid, the said party of the second part therein shall vote said stock in such manner as it may deem proper at all meetings of the stockholders of said corporation.

But the said second party hereto, nor the said Portneuf-Marsh Valley Canal Company, Limited, cannot in any manner control any of the said system so as to limit the liability of the second party under the terms of this contract.

The said Portneuf-Marsh Valley Canal Company, Limited, shall have the management, ownership and control, as above set out, of said irrigation system as fast as the same is completed and turned over to it for operation by the said party of the second part, as hereinafter provided. Whenever it is certified by the Chief Engineer of the Company and the State Engineer of Idaho, that certain portions of the said irrigation works have been so far completed as to permit the operation thereof for delivery of water to purchasers of water rights, the same may, with the consent of the State Land Board, be transferred and turned over to the said Portneuf-Marsh Valley Canal Company, Limited, for operation. Such transfer and operation, however, shall not in any manner lessen the responsibility of the said second party with reference to the terms of this contract nor shall such consent upon the part of the State Land Board be construed as a final acceptance of such portion of such canal, it being always understood that the acceptance of said irrigation system must be in its entirety, and that the bond given for the faithful performance of said contract must be made and be liable for

the substantial completion of the entire irrigation system." (R. 259-261)

The following provision is also found in this contract:

"Existing Laws Part of Contract.

"It is hereby understood and expressly agreed that this contract is made and entered into by virtue of the provisions and subject to all of the conditions of an Act of Congress, commonly known as the 'Carey Act', approved August 18, 1894, and the acts amendatory thereto and the laws of the State of Idaho, accepting the terms and provisions of the said 'Carey Act', and the contract between the United States, and the State of Idaho, segregating fro mthe public domain the lands herein designated as Carey Act Lands, and that such laws and contract are as much a part of this contract as if specifically herein set forth." (R. 265-266)

The Articles of Incorporation of the Portneuf-Marsh Valley Canal Company appear in the record beginning at page 274, and among the purposes for which it is formed we find the following:

"(a) To provide a convenient method of transferring the ownership and control of the dams, reservoir, canals, irrigation system and all rights, franchises and privileges pertaining thereto and connected therewith, constructed or to be constructed by said Portneuf-Marsh Valley Irrigation Company, Limited, pursuant to said agreement of June 3, 1908, as the same shall be completed and turned over by said Portneuf-Marsh Valley Irrigation Company,

Limited, to this corporation, representing and comprising the purchasers of shares and water rights in said irrigation system; to determine the rights of said purchasers of said shares and water rights as between themselves and between said purchasers and the said Portneuf-Marsh Valley Irrigation Company, Limited; to operate and maintain said irrigation system and works as the same shall be completed and turned over to it during the period of construction and subsequent thereto; to levy and collect tolls, charges and assessments for the carrying on and maintaining of said irrigation system and management and operation thereof.

(c) When and as such irrigation system may be turned over to it by the Portneuf-Marsh Valley Irrigation Company, Limited, for operation, to distribute the waters diverted by and a part of the said irrigation system and to which this company may be entitled, among the stockholders thereof; to maintain, operate and keep in repair said irrigation system; to fix, charge and collect from its stockholders and all users of water from its said irrigation system, tolls, rentals, assessments and maintenance charges based upon the number of shares of stock held by each person or proportioned to the amount of water used, or owned, or the number of acres irrigated by each person or by any one or more or by all of such methods, and to impose and collect fines and penalties for the failure of its stockholders or water users to pay the tolls, rentals, assessments or maintenance charges when the same become due." (R. 275-276)

The By-Laws of the Portneuf-Marsh Valley Canal

Company which were adopted on September 18th, 1908, (R. 289) provide:

"Article V.—Stock.

"Section 1. Stock Appurtenant to Land.—The Certificates for shares of the capital stock of the Company shall be in such form not inconsistent with these by-laws or the Certificate of Incorpration, or shall be prepared and approved by the Board of Directors. They shall be signed by the President, or, in his absence, by the Vice-President, and also by the Secretary, and sealed with the corporate seal. The records of the Company and each and every certificate of stock issued, under which water shall be delivered for the irrigation of land, shall contain a description of the lands to be irrigated and to which such shares and water rights shall be perpetually appurtenant, and thereafter such shares and water rights shall forever be dedicated and inseparably appurtenant to such lands, unless such shares of stock and the rights and interest created thereunder or accruing by reason of the ownership thereof shall become forfeited through a failure of the owner or holder thereof to pay assessments against such stock or for the use of water thereunder from such canal, or unless such stock shall be forfeited or sold by operation of law, or shall become forfeited under the provisions of these by-laws for failure of the holder thereof to comply with such by-laws and the rules and regulations of the Company.

Sec. 2. Transfer of Title.—Every transfer of the title to any lands to which the said rights and shares are appurtenant, whether by grant or by operation of law (except where the lands

may be subjected by grant, or involuntarily under any law, to an easement, the exercise of which does not interfere with the cultivation of the soil by the servient owner) shall operate, whether to be expressed therein or not, as a transfer to the grantee or successor in title, of all rights to the use of water for the irrigation of said lands, also all rights arising from, or incident to, the ownership of such shares, as well as the shares themselves; and upon presentation to this company of proof of any such transfer of land, the proper officer shall transfer such shares of stock upon the books of the successor in title to said lands.

Sec. 3. Transfer of Shares.—Any transfer or attempted transfer of any of the shares of this Company, made or suffered by the owners thereof, unless simultaneously a transfer of the land to which it is appurtenant is made or suffered in favor of the same party, shall be of no force or effect for any purpose, and shall confer no rights of any kind whatever on the person or persons to whom such transfer may have been attempted to be made.

Sec. 5. Expense of Maintenance.—For the purpose of defraying the expenses of the Company of whatsoever kind and paying the cost for maintaining, managing and operating said canal system, the Board of Directors of the Company are authorized and directed to levy such tax or taxes, charge or charges, assessment or assessments, as in the judgment of said Board may appear necessary or proper to raise the money or revenue required. All such expenses, taxes, costs and charges to be apportioned among all the stock issued by the Company, which has been applied and made ap-

purtenant to land, but no such assessment or tax shall be levied against shares which have been issued to or are held for the benefit or in the interest of The Portneuf-Marsh Valley Irrigation Company, Limited, and which has not ben sold or made appurtenant to land.

The taxes or assessments herein provided for, shall be levied against the owners of the shares of stock applied or made appurtenant to land, regardless of whether water has been used for irrigation purposes by the holder of said stock.

Sec. 8. Shares Held Subject to Rights of the Portneuf-Marsh Valley Irrigation Company, Limited.—All shares in this corporation shall be held subject to the rights of the Portneuf-Marsh Valley Irrigation Company, Limited, until the amount due such Company, its successors or assigns, shall have been fully and finally paid, as provided in the contract between said corporation and the purchaser of shares and as provided in the contract between the Portneuf-Marsh Valley Irrigation Company, Limited, and the State of Idaho.

Sec. 9. Default in Payments.—Upon this Company being notified under oath by the Portneuf-Marsh Valley Irrigation Company, Limited, its successors or assigns, that any stockholder in this corporation has defaulted in his payments, or any of them to be made under his contract of purchase of water right, pursuant to which stock in this Company was issued, no water from the canal of this Company, or any of its laterals, shall be delivered to such stockholder or for the use or benefits of the land described in such stock certificate,

until the amount so due The Portneuf-Marsh Valley Irrigation Company, Limited, its successors or assigns, has been fully paid or otherwise adjusted to the satisfaction of such Company, its successors or assigns." (R. 284-287)

Plaintiff's Exhibit C-1 appearing in the record at pages 125 to 131, is the form of water contract entered into between the Portneuf-Marsh Valley Irrigation Company and the various settlers and is the form used by the company up to the time that the irrigation project was turned over to the settlers. (R. 90-91) Reference is made here to the following from the contract form between the Portneuf-Marsh Valley Irrigation Company and the settlers:

"2. The Company agrees that so long as it retains control of the Portneuf-Marsh Valley Canal Company, Limited, to-wit, so long as it shall continue to vote a majority of the stock of said Company, as provided by the State contract, that it will cause said Company to keep and maintain the said irrigation system in good order and condition and to cause any necessary repairs thereto to be made as soon as practicable and expedient.

Said Portneuf-Marsh Valley Canal Company, Limited, is to have power to levy all necessary tolls, charges and assessments upon all users of water in proportion to their respective holding of stock, whether water is used or not and the Company hereby agrees that no charges shall be made for the delivery of water from this date until after the first day of April, 1909, and then only if the water from their reservoir

and irrigation system is available for delivery, and that thereafter the annual charge for maintenance shall not, while the Company is in control of the said Portneuf-Marsh Valley Canal Company, Limited, exceed the sum of 50 cents for each and every acre to be charged against the entire acreage entered irrespective of the irrigation thereof. The purchaser agrees to pay said charges in advance at the office of the Portneuf-Marsh Valley Canal Company, Limited, on the first day of April of each year without notice." (R. 127)

"And the purchaser hereby further covenants that he will and by these presents does hereby grant, assign, transfer and set over by way of mortgage or pledge to the Company to secure the payments of the amounts due and to become due on the purchase price of the shares of stock hereby purchased, any and all interest, and all rights which he now has or which may hereafter accrue to him under his contract with the State of Idaho, for the purchase of the lands to which the water rights hereby purchased are dedicated, and further that immediately upon transfer to him of the legal title to said lands or any part thereof, he will, upon demand, execute in proper form, a mortgage or deed of trust with power of sale in such form as may be approved by the State Board of Land Commissioners to secure the payments herein provided for, which said mortgage the purchaser hereby covenants and agrees shall be a first lien upon the lands so mortgaged, superior to any and every incumbrance in favor of any persons whomsoever.

5. The purchaser agrees that to further se-

> cure said payments the shares of stock purchased in the Portneuf-Marsh Valley Canal Company, Limited, shall be and they are hereby assigned and transferred to the Company with power to pledge the same and said Company and its agents and assigns are hereby authorized and empowered to vote said stock in such manner as it or they may deem proper at all meetings of the stockholders of said Company until 35 per cent of the purchase price of said stock has been paid." (R. 129-130)

The trust deed for the foreclosure of which this action was brought is attached to the bill of complaint as Exhibit "A". (R. 25-55) It was received in evidence as Plaintiff's Exhibit "A". (R. 90-111).

The trust deed mortgaged all of the physical properties owned by the Portneuf-Marsh Valley Irrigation Company as a part of the system itself. This covered rights-of-way, reservoir, water rights and appropriations, etc. (R. 32-37) It also included the water contracts of the various settlers in the following terms: (R. 37)

> "Also such water contracts and notes secured by mortgage or trust deed and such bills receivable owing to the Company and money now owned or hereinafter acquired and such personal property of whatsoever nature or description now owned or hereafter acquired by the Company as shall be lodged with the Trustees under the provisions hereof."

The trust deed also provided (R. 38)

> "Article I. So long as no default shall be made in the payment of the principal or the

interest of the said bonds according to their tenor and effect, and so long as the condition of this deed shall be performed the Company shall be entitled to receive its incomes and profits; and may sell, and may exchange for other property, free of the lien hereof, water and water rights to bona fide purchasers thereof and receive and collect the proceeds of such sales and trades precisely as if this mortgage had not been made."

The trust deed also contained the following provision: (R. 39-40)

"Article III. Before any bonds shall be issued under this instrument there shall be pledged hereunder with Colonial Trust & Savings Bank, one of the Trustees, water contracts owned by the Company or notes secured by mortgage or deed of trust upon land and water rights thereunto attached (hereinafter called 'notes') or cash money, or partly water contracts, and partly secured notes or cash moneys, aggregating at par one and one-half (1½) times the par value of the installment of bonds of this issue then demanded by the Company and issued by the said Trustee hereunder. But the said Trustee shall require the opinion of counsel, selected by it and paid by the Company, to the effect that said water contracts (if water contracts are so deposited) are and constitute direct liens upon real estate capable of being irrigated from the irrigation system of the Company; or that said notes (if notes are so deposited) are amply secured by mortgages or trust deeds which are direct liens upon real estate capable of being irrigated from the irrigation system of the Company to which lands have been attached water

rights sufficient to irrigate them; and both such land and water shall be subjected to the lien of such mortgage or deed of trust.

The Company further covenants and agrees that the par value of the aggregate of the secured notes and water contracts, which it shall from time to time assign to and deposit with the said Trustee for the purpose of securing and of paying the principal and interest of the bonds issued and to be issued hereunder shall always equal one hundred and fifty per cent (150%) of the par value of the outstanding bonds, less the actual cash then in the hands of the said Trustee applicable to the payment of any matured bond or bonds properly called for redemption prior to maturity as herein provided. The said secured notes and water contracts so deposited with the said Trustee shall by the Company be duly assigned to the Trustees by a good and proper written assignment, and the said mortgages, or trust deeds and water contracts shall be duly assigned by the Company and recorded in the proper county. And the said Trustee shall on behalf of the holders of the bonds secured hereby collect, and if it deems it best to do so, enforce the collection of such secured notes, and water contracts, and shall apply the proceeds of such collection to the equal pro rate payment of the bonds and coupons hereby secured, paying all overdue coupons first. And the Trustees shall, upon demand, and after the payment of such secured note or notes or water contract or contracts, make, execute and deliver a full and complete release and satisfaction of the lien thereof to such purchaser, for each of which they shall be entitled to charge, and the Company shall pay, a fee of Two Dollars.

> By 'Water Contract', as the same is used in this instrument, is meant a contract for water to be delivered from the company's water supply and to be attached to a specific tract of land, and securing, by way of mortgage lien upon both land and water, the purchase price of said water until such purchase price shall be fully paid.
>
> By 'Note' as the same is used in this instrument is meant a note given to the Company in payment or part payment of the purchase price of water to be delivered from the Company's water supply and secured by mortgage or deed of trust both upon said water and upon the land to which the water is attached."

Following the usual history of Carey Act promotions, difficulties were encountered by the construction company in the completion of the irrigation system. It being necessary for the State of Idaho to accept the system as completed before the construction company could be relieved of liability on its contract with the State, and this also being a condition precedent to the obtaining of patent to the lands by the State from the Federal Government, after much negotiation a reorganization took place in 1915.

On March 25th, 1915, the construction company, namely, the Portneuf-Marsh Valley Irrigation Company, and the operating company, namely, the Portneuf-Marsh Valley Canal Company, the petitioner here, joined in a petition to the State Board of Land Commissioners to accept the system as completed, to exonerate the bond of the Portneuf-Marsh

Valley Irrigation Company given by it to insure the faithful performance of its contract with the State of Idaho, and to authorize the turning over of the system to the Portneuf-Marsh Valley Canal Company. (Plaintiff's Exhibit I, R. 150) This petition was joined in by practically all the indivdual water contract holders on the project, as will appear from Exhibit "B" to Plaintiff's Exhibit I, beginning at page 160 of the record.

As a part of the adjustment thus made, a new contract was entered into between the Portneuf-Marsh Valley Irrigation Company, the construction company, and the Portneuf-Marsh Valley Canal Company, the operating company. This contract is set forth as Exhibit "A" to Plaintiff's Exhibit I. (R. 151)

By this contract, among other things, it was provided, that the stock of the Portneuf-Marsh Valley Canal Company should be reduced from 20,000 to 14,000 shares, thus reducing the area of the land for which water could be sold from the system as constructed, from 20,000 to 14,000 acres. Other provisions in this contract of adjustment are not of any peculiar materiality to the decision of the question which is here presented.

Pursuant to the adjustment as made, the State Board of Land Commissioners of the State of Idaho, adopted the recommendations of the interested parties and entered its order accepting the irrigation system constructed and discharging the construction company from further liability under

its contract of June 3rd, 1908, with the State of Idaho, and exonerating its bond. (Plaintiff's Exhibit "J", R. 162-163) Thereafter, the Portneuf-Marsh Valley Irrigation Company, the construction company, entered into new contracts with the settlers, or such of the settlers as were willing to sign the new contracts, which new contracts were in the form of Plaintiff's Exhibit "C-2", appearing in the record at pages 133 to 137. These new contracts were very similar to the contracts entered into in 1908, and provided that the settlers should secure the unpaid balance due upon their contracts for the purchase of water by a trust deed, or mortgage, upon their land and water, and also that for the purpose of further securing such payments, the shares of stock which the settler held in the Portneuf-Marsh Valley Canal Company should be assigned and transferred to the construction company with power in the construction company to pledge the same. (R. 135)

Subsequent to the adjustment, made as aforesaid, the trustees under the bond issue from time to time brought proceedings to foreclose the lien of some of the water contracts of the settlers. (R. 91) In none of these actions was the Portneuf-Marsh Valley Canal Company made a party. It was, therefore, stipulated at the trial of the cause that the Portneuf-Marsh Valley Canal Company remained unaffected by any decrees of foreclosure in the State court of Idaho on any such individual water contracts. (R. 92) The form of sheriff's deeds taken by the trustees in such instances is set forth as Plaintiff's

Exhibit "D-1", (R. 141-144) and the list of sheriff's deeds with the description of the land involved, stock certificate number in the Portneuf-Marsh Valley Canal Company, and number of shares of stock in that company, is set forth at page 140 of the record.

The trustees also in several instances, where defaults had occurred under the water contracts of the respective settlers, contracted with the settlers and for a small payment down obtained quit claim deeds. (R. 95) Plaintiff's Exhibit "E" at page 144 of the record contains a list of the quit claim deeds thus taken, the list including, in addition to the description of the land, a statement of the stock certificate number in the Portneuf-Marsh Valley Canal Company, and numbers of shares of stock represented.

It will be particularly noted in all the contracts between the Portneuf-Marsh Valley Irrigation Company, the construction company, and the petitioner herein, that all of the issued stock of the canal company was to be made liable for assessments to maintain and operate the system. The only execption was stock which was issued to the Portneuf-Marsh Valley Irrigation Company *and not made appurtenant to land*. In other words, all stock was subject to maintenance assessments and operating assessments which had at any time been transferred to a settler or contracted for by a settler and made appurtenant to land even though it subsequently became the stock of the Portneuf-Marsh Valley Irrigation Company. Stock, however, which had never been sold by the Portneuf-Marsh Valley Irrigation Company

to a settler, and which though issued to it, had not actually been made appurtenant to land, was not to be assessed for the maintenance of the system. The fact that no water was being used upon land to which water stock had been made appurtenant had no effect upon the liability of the stock for assessments, it being provided that whether water was used or not the stock should, nevertheless, be liable for its assessment.

A portion of the settlers paid up their contracts in full (R. 98) and from the record we can assume that the following table represents the stock of the Portneuf-Marsh Valley Canal Company as now outstanding and as affected by this action: (R. 300)

Held by Portneuf-Marsh Valley Irrigation Company, issued but not appurtenant to land, ... 1760 shares;

Issued and made appurtenant to land, ... 12,240 shares

Of the amount which has been issued and made appurtenant to land, 5,495.2 shares were regularly assessed for maintenance in the various years from 1918 down to the time of this action; failed to pay the assessments levied, and under proper proceedings were offered for sale for nonpayment of assessments and bid in by the company, Portneuf-Marsh Valley Canal Company. The company now holds this stock, with the right on the part of the original owner of the land, or his successor in interest, to redeem them upon paying the amounts assessed against the stock, with interest.

The 5,495.2 shares of stock is the stock referred to in paragraph six of the decree of the lower court. (R. 337-339)

As to all of the stock just mentioned, it will appear from the contracts of the settlers and also from a stipulation in the record, that the same was issued to or contracted to be issued to the various settlers at the time of the opening of the land for entry in 1908. (R. 95) It will be noted, therefore, that all this stock was contracted to settlers prior to the time that the trust deed was executed by the Portneuf-Marsh Valley Irrigation Company to the predecessors in interest of the respondents herein

The issue thus presents itself from this rather involved record in the language of counsel for the trustees in the cause before the court in the District of Idaho, in the following language:

> *"The only controverted issue presented for decision in this case is the relative priority of the lien of the Portneuf-Marsh Valley Irrigation Company, Limited, (the construction company) for the purchase price of its water rights as against the lien of the Portneuf-Marsh Valley Canal Company, Limited, a Carey Act settlers' operating company, by reason of assessments for maintenance."* (R. 298)

The foregoing statement of the issue is taken from the opinion of the Honorable F. S. Dietrich, District Judge, he having stated the issue in the language employed by counsel for the trustees, the rspond-

ents here. Without doubt the issue is correctly defined and it eliminates from the case at the outset any question of rights which the trustees might have superior to the rights which, in the absence of the trust deed, could have been asserted by the Portneuf-Marsh Valley Irrigation Company itself.

Before proceeding with the argument, there is one further fact which should be before the court which has assumed some importance in the decision of both the courts heretofore called upon to pass upon the case.

Section 3019 of the Idaho Compiled Statutes provides as follows:

> "§3019. *Lien for purchase price of water right.* Any person, company or association, furnishing water for any tract of land, shall have a first and prior lien on said water right and land upon which said water is used, for all deferred payments for said water right; said lien to be in all respects prior to any and all other liens created or attempted to be created by the owner and possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which said water right was acquired."

SPECIFICATION OF ERRORS TO BE URGED

The petitioner will urge upon this court that the Circuit Court of Appeals for the Ninth Circuit erred in holding, first, that the Carey Act (Act of Congress of Aug. 18th, 1894, 28 Stat. at Large, 372-422) "and acts amendatory thereof" creates a lien of any character whatever; second, in holding that the lien which the petitioner here seeks to enforce for unpaid water assessments is a lien "created by the owner and possessor of the land" within the meaning of Section 3019 of the Idaho Compiled Statutes; and third, that a stockholder in a corporation can assign his stock so as to free it from the obligation of paying all assessments lawfully levied against it by the corporation.

SUMMARY OF THE ARGUMENT.

The lien asserted by the petitioner here and the lien asserted by the trustees who are respondents here are based alike upon the contracts between the parties interested in the Portneuf-Marsh Valley Irrigation project, and are not dependent in any sense upon either Federal or State legislation.

The lien of the trustees for the unpaid balance on the water contracts of the settlers is a lien by way of mortgage and pledge executed by the settlers to the construction company, to the rights of which company the trustees have succeeded.

The mortgages given by the settlers to the construction company and the pledge of the stock by the settlers to the construction company can be foreclosed by the trustees under their trust deed but only subject to the burdens which the property mortgaged and the stock bore in the hands of the original settler.

One of the burdens subject to which the mortgages and pledges were given and taken was the burden of paying assessments on the water stock in the petitioner company or, in the ultimate, the burden of maintaining and of operating the irrigation system.

ARGUMENT.

The issue involves the priority of liens. We have heretofore quoted in this brief the issue as defined by counsel for the trustees, who are respondents here, and we desire again to quote that portion of the record. (R. 298)

> *"The only controverted issue presented for decision in this case is the relative priority of the lien of the Portneuf-Marsh Valley Irrigation Company, Ltd., (the construction company) for the purchase price of its water rights as against the lien of the Portneuf-Marsh Valley Canal Company, Ltd., a Carey Act settlers' operating company, by reason of assessments for maintenance."*

The foregoing quotation clearly defines the two liens concerning the priority of which the cause has reached this court. It will be noted that no claim is made on behalf of the trustees which could not have been asserted by the Portneuf-Marsh Valley Irrigation Company, Ltd., (the construction company) if the contracts with the settlers had not been hypothecated. In other words, the issue is between the construction company and the operating company.

The lien of the construction company is for the purchase price of its water rights. There are three sources from which it can be asserted. This lien derives its existence from, *first*, Congressional legislation, namely, the Carey Act; *second*, legislation of the State of Idaho; and, *third*, the contracts between the construction company on the one hand and the State of Idaho on the other, and between the con-

struction company on the one hand and the operating company on the other, and between the construction company on the one hand and the settlers on the other.

As to the first of these three sources, we submit it to this Honorable Court that the Carey Act in and of itself does not create any lien; does not define any lien; and does not limit the right to a lien. The Carey Act is an enabling act only. The Federal legislation which has to do therewith is the Act of June 11th, 1896, Chapter 420, Section 1, (29 Stat. at Large, 413). The language of the act is as follows:

> "A lien, or liens, is hereby authorized to be created by the state in which such lands are granted and by no other authority whatever, and when created shall be valid on and against the separate legal subdivisions of land reclaimed, for the actual cost and necessary expenses of reclamation and reasonable interest thereon from the date of reclamation until disposed of to actual settlers."

The Circuit Court of Appeals of the Ninth Circuit, in the case of Equitable Trust Company of New York against Cassia County, and others, 5 Fed. (2nd) 955, on May 25th, 1925, held as follows, in referring to the Carey Act:

> "There seems to be some contention that the reclamation lien finds support or sanction in the laws of the United States, but such is not the case. The Act of Congress referred to is simply an enabling act. The states were power-

> less to create liens on public lands until the title had passed from the general government, or at least until the title had been earned, without the consent of the United States, and the Act of Congress was passed for the purpose of removing this restriction on the powers of the states. The act does not attempt to do more. It creates no lien, and denies no power to the states after the title has passed from the general government; and, considering the question as one of local law only, the Supreme Court of the State of Idaho has held that the tax lien is superior and prior to the reclamation lien.—Continental & Commercial Trust & Savings Bank v. Werner, 36 Ida. 602.

The decision of the Supreme Court of Idaho which is referred to in the foregoing opinion finds its support upon the same construction of the Carey Act, namely, that it authorized the states, and no other authority, to *create and define* the liens therein referred to.

We pass from this branch of the case, therefore, assuming the position that the lien which the respondents here claim must rest for its validity upon some other authority than is to be found in the Carey Act.

The second source from which the lien asserted by the respondents here could have been created and defined, is, as stated above, the statutes of Idaho.

The legislature of Idaho has performed the ceremony of accepting the conditions of the Carey Act.

(Laws of 1895, page 219; Laws of 1899, page 284; Laws of 1919, page 67; Idaho Compiled Statutes, Sec. 2996). Whatever may have been the necessity for this ceremony, it is apparent that in so far as it affects the character of lien here under discussion, nothing was added to the Congressional legislation on the subject.

During all the time involved in the present controversy, Section 3019 of the Idaho Compiled Statutes has been in effect, and its provisions are as follows:

> "§ 3019. Lien for purchase price of water right. Any person, company or association, furnishing water for any tract of land, shall have a first and prior lien on said water right and land upon which said water is used, for all deferred payments for said water right; said lien to be in all respects prior to any and all other liens created or attempted to be created by the owner and possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which said water right was acquired."

It is apparent that the statutes of the State of Idaho do not assume to go farther than to confirm the right to a lien on the part of the builders of the irrigation system. Something further is necessary than the legislation of Idaho when a lien is sought to be enforced in any specific case. The contract, or

contracts, under which the work is undertaken and prosecuted must in all cases be the ultimate ground upon which the lien must rest and upon which it must be defined. In the instant case, therefore, as counsel for petitioner view the matter, it is necessary for us to examine the third source referred to above as the final basis upon which this case must rest.

The contract between the promoters of this project and the State of Idaho was entered into on June 3rd, 1908. (R. 250-267) Section 7 of the contract (R. 257) provides for the sale by the State to settlers of lands within the project. Section 8 (R. 257-259) provides the price and terms of payment of water rights sold to settlers.

The form of contract which the construction company, the Portneuf-Marsh Valley Irrigation Company, used in making sales of water to settlers appears in the record as plaintiff's exhibit "C-1" (R. 125-131). This contract, when read in connection with Section 3019 of the Idaho Compiled Statutes, is material for the purposes of determining what lien, if any, existed in favor of the construction company. In the last paragraph on page 129 of the record, the form of security which the settler pledged himself to give is set forth. Unless we have entirely failed to sense the meaning and purpose of these various contracts, the settler agreed to secure all payments with a mortgage upon the land and the water which was appurtenant thereto. It follows, of course, that such a mortgage would be governed by

the laws of Idaho. In paragraph 5, on page 130 of the record, the settler also agreed to assign his water stock certificate in the operating company to the construction company and authorized the construction company to pledge this stock certificate.

The foregoing statement, without further embellishment, we believe, supplies every necessary element for the determination of the form of lien which the construction company claims.

As has been heretofore set forth in the statement of facts herein, the original contract between the promoters and the State of Idaho made provision for the orderly transfer of title to the irrigation system and appurtenant water rights to the settlers by means of an operating company. The contract of the promoters with the State of Idaho obligated the promoters themselves to cause this operating company to be incorporated. The record here shows that the company was incorporated and that the methods of its functioning were in effect a part of the original contract between the promoters and the State of Idaho.

The sale of water rights by contract, or otherwise, had the effect of dedicating the water to the land to which it was to be applied. We find this clause in the contract between the promoters and the State of Idaho on page 262 of the record:

> "The sale or contract of water rights to a purchaser shall be a dedication of the water to the

land to which the same is to be applied, and the water right so dedicated shall be a part of and shall relate to the water right belonging to the said system of canal."

In incorporating the operating company, with the situation as hereinbefore set forth in the minds of all the parties, it was provided that the operating company could levy assessments for the purpose of carrying on, maintaining, managing, and operating the irrigation system. (R. 275-276) In the By-Laws of the operating company (R. Sec. 5, p. 285) it was provided that all stock issued and made appurtenant to land should be subject to assessment for the foregoing purposes. As heretofore pointed out, the only exception was stock "held for the benefit or in the interest of the Portneuf-Marsh Valley Irrigation Company, *and which has not been sold or made appurtenant to land.*"

In so far as the specific lien of the construction company is concerned, in the light of the foregoing provisions of the contracts between the parties, when we consider the method of its enforcement, it will readily apear what its limitations are. The water itself having been made appurtenant to land, and the land having been mortgaged as security to the construction company, the construction company held both the land and the water as security. Upon any default on the part of the individual contract holder, the construction company had the right to foreclose its mortgage on the water and the land. If it foreclosed its mortgage and obtained title to the water

and the land through that means, then it stepped into the shoes of the individual settler who had previously owned it. The water having been theretofore made appurtenant to land, then the stock in the operating company which represented that water remained subject to assessment regardless of who might own the stock. The fact that the construction company obtained title to the land and water through foreclosure proceedings against the original contract holder did not create any different situation than if the original contract holder had conveyed his land and water to some other individual. One of the burdens attached to the ownership of land and water under this particular irrigation system was the burden of paying a proportionate share of the cost of maintaining and operating the system which delivered the water. That obligation followed the land and the water regardless of who owned it. These deductions, it seems to us, follow naturally from the situation, and do not lead to any conflict whatever between the sections of the statutes of the State of Idaho confirming the right to a lien for the unpaid balance on water contracts and the general right of such a corporation as the petitioner here to maintain itself and to preserve its properties by levying assessments on its stockholders.

The test of any theory is its practical operation. That the foregoing theory is the only logical solution of the situation here, we think will be apparent from a consideration of its effect when applied.

Let it be assumed that at the inception of this par-

ticular project there were fifty farmers who purchased land and water with the idea of reclaiming the land and building a home. Each purchaser of water presumably entered into his contract with a knowledge and understanding of the methods by which the system was to be constructed and turned over to the settlers themselves. Each purchaser bought his land and his water with the understanding that the irrigation system would be operated and would be maintained. Each purchaser knew that the operating company had no means of raising revenues for the preservation and the maintenance of the irrigation system other than by assessing the stockholders in the operating company, and each purchaser of stock knew that the stockholders of the operating company were the settlers themselves, each one interested in proportion to the amount of his purchase. Naturally, each purchaser of water knew that the system would be maintained only by assessments against himself and all the other settlers. The natural query for such an entryman to make at the time of his purchase would be, "If I make all my payments but the other forty-nine settlers fail to make theirs, is the stock in the operating company still subject to assessment or can the construction company forfeit the contracts of the other forty-nine settlers and leave the stock which I hold as the only stock which is subject to assessment? and if such a situation can result, will it follow that the entire burden of maintaining and operating this entire irrigation system will fall upon me as the only stockholder whose stock remains subject to assess-

ment?" The foregoing is the natural question to be asked of the promoters of this project by the intelligent entryman. The answer of the promoters is just as logical from this record. The answer of the promoters would be in the language of Section 5 of Article 5 of the By-Laws of the operating company, appearing on page 285 of the record. The promoters would inform such a doubtful entryman that he need have no fear upon that subject for the reason that just as soon as water was sold to an entryman it became appurtenant to the land to which it was to be applied, and that, regardless of who owned the land and the water, the stock representing that water would remain subject to assessment.

There does not appear anywhere in the contracts of the parties involved in this litigation a provision to the effect that land once sold could be forfeited to the construction company; that water once sold and made appurtenant to land could be forfeited to the construction company; that water stock once issued for water made appurtenant to land could be forfeited to the construction company. The rights of the construction company against all contract holders violating their contracts were limited to foreclosure upon the land and water itself. In short, the construction company retained the right, upon nonpayment of the moneys due it, to proceed against the contract holder and take his title away, and place it in the construction company, subject to the right to sell it to a new settler but still charged with all the burdens which it bore when in the hands of the original purchaser.

The character of the lien of the trustees is further defined by the manner in which they are in a position to enforce it. If a contract holder defaults in the payments due on his contract, the following remedies become open to the trustees:

First: Under the provisions of paragraph four of the settler's contract, the trustees may foreclose the mortgage which the settler gave, and they may also foreclose the pledge of the stock in the Portneuf-Marsh Valley Canal Company, which the settler has authorized. (R. 129-130)

Second: Indirect coercion may be availed of and the water called for in the contract of the settler may be shut off until the settler has made his payments. (Section 6 of the contract, R. 130).

The foregoing two remedies are provided by the original contracts entered into in 1908 and the same remedies are provided in the 1915 contracts. (R. 135). The foregoing analysis of the rights of the respective parties has, of course, been made from the record of their contracts. It follows that, as counsel for the petitioner view the case, the Court is not called upon to construe Section 3019 of the Idaho Compiled Statutes.

The assertion at the outset of this litigation by the trustees, who are respondents here, that

> *"the only controverted issue presented for decision in this case is the relative priority of the*

lien of the Portneuf-Marsh Valley Irrigation Company, Limited, (the construction company) for the purchase price of its water rights as against the lien of the Portneuf-Marsh Valley Canal Company, Limited, a Carey Act settlers' operating company, by reason of assessments for maintenance",

serves no purpose other than to emphasize the unquestioned priority of the assessments for maintenance. The lien of the Portneuf-Marsh Valley Irrigation Company (the construction company) is a lien based upon contract by which, as security for the unpaid purchase price of its water rights, the Portneuf-Marsh Valley Irrigation Company obtained, first, a mortgage; second, a pledge of stock. On foreclosure of that mortgage and that pledge of stock, the Portneuf-Marsh Valley Irrigation Company, if it were the purchaser on foreclosure sale, stepped into the shoes of its mortgagor and its pledgor. It could obtain by foreclosure no greater rights than its mortgagor and pledgor had. Its mortgagor and pledgor held the property at all times subject to the burden of paying the assessments levied against the stock. If the theory of the trustees here is sound, and at the sale of the pledged stock in the Portneuf-Marsh Valley Canal Company, some indivdual was purchaser, as the law contemplates he might be, then that individual would become a stockholder in the Portneuf-Marsh Valley Canal Company, freed of the burden of paying assessments on his stock to maintain the system which the canal company had owned. If the pledgee of the stock, in the absence of other bidders, purchased

the stock at the foreclosure sale itself, it would assume no different position than would any other purchaser, and it would then become a stockholder in the Portneuf-Marsh Valley Canal Company and would hold the stock subject to the same burdens as the pledgor.

It has been conceded throughout the proceedings here that the trustees have no greater rights in the premises than the construction company itself would have had the trust deed not been delivered. It is possible that an explanation should be made of this situation in the light of the argument which has just been made.

At the time that the trust deed for the foreclosure of which this action was brought was executed and delivered, namely: October 16th, 1909 (R. 53) (the date to which we refer is the date of acknowledgement) the Portneuf-Marsh Valley Canal Company, the petitioner here, had already been formed and the form of stock certificates to be issued had been prepared and were included in the contracts with the various settlers on the tract. The land had been opened to entry and all the contracts which are here involved had been entered into. (This latter statement is borne out by the stipulation of counsel appearing at page 95 of the record, wherein it was agreed that all of the stock of the canal company which is the subject of this litigation, or which was in the hands of the trustees had been, by the Portneuf-Marsh Valley Irrigation Company, sold

under contract to the various land owners under the project, and the water rights, or the stock made appurtenant to the several tracts of land described in the contract at the time of sale.) The conveyance from the Portneuf-Marsh Valley Irrigation Company to the Portneuf-Marsh Valley Canal Company of the irrigation system and appurtenant water works had not actually been made. Strictly speaking, it is probably true that the Portneuf-Marsh Valley Canal Company issued its stock to the order of the Portneuf-Marsh Valley Irrigation Company without consideration until it actually received the conveyance of the irrigation system and appurtenant water works. However this may be, the fact remains that at the time the trust deed was executed, all the land here involved had been sold to settlers on contract. Title to the irrigation system and appurtenant water works remained in the construction company, the Portneuf-Marsh Valley Irrigation Company, but that title was of course subject to the contractual obligations which the Portneuf-Marsh Valley Irrigation Company had assumed to the various settlers and to the State of Idaho to transfer the system and appurtenant rights to the operating company, the Portneuf-Marsh Valley Canal Company, the petitioner here. In the light of this situation, when the trust deed was given, it was, of course, necessary that all the rights of the Portneuf-Marsh Valley Irrigation Company should be included therein. Legal title to the irrigation system and appurtenant water rights remained in the Portneuf-Marsh Valley Irrigation Company, and, consequently was included in

the trust deed. The Portneuf-Marsh Valley Irrigation Company had certain contracts with the settlers; consequently, these contracts were pledged as security in the trust deed; the Portneuf-Marsh Valley Irrigation Company, with each contract which it delivered in accordance with the terms of the various contracts appearing in the record, was also delivering stock in the Portneuf-Marsh Valley Canal Company to the purchaser, and, consequently, the trust deed provided for the pledge of the stock.

When the time came to foreclose the trust deed, the trustees foreclosed on everything which the trust deed covered and thereby the trustees sought to step into the position of the Portneuf-Marsh Valley Irrigation Company. More than this, of course, they could not do. The decree of foreclosure appearing on page 315 of the record authorizes a foreclosure on the irrigation system and appurtenant rights which, of course, under the trust deed, was proper, but the decree does not go further than to authorize foreclosure and sale in accordance with the pre-existing obligations of the Portneuf-Marsh Valley Irrigation Company to transfer the irrigation system to the Portneuf-Marsh Valley Canal Company.

It is for these reasons that the trustees themselves defined the issue as heretofore set forth in this brief, namely: that the issue was as between the Portneuf-Marsh Valley Irrigation Company, (the construction company) on the one hand, and the Portneuf-Marsh Valley Canal Company, (the operating

company,) on the other. It is for these reasons that the trustees have not acquired, and can not now assert, any greater rights, nor any different rights, than the construction company, that is, the Portneuf-Marsh Valley Irrigation Company, could assert, if the trust deed had not been given.

It is respectfully submitted that the decree of the District Court of the United States, for the District of Idaho, and particularly paragraph six thereof, is correct, and that the cause should be, by this Court, remanded with instructions to affirm the decree originally entered herein by the District Court in Idaho.

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No. 252

IN THE

Supreme Court

OF THE

United States

OCTOBER TERM, 1926

PORTNEUF-MARSH VALLEY CANAL COMPANY,
Petitioner,

vs.

HOWARD W. BROWN and JOHN R. CHAPIN, as Trustees.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF OF RESPONDENTS

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BRIEF OF RESPONDENTS

STATEMENT OF THE CASE

The respondents, residents and citizens of the State of Massachusetts, are trustees for the owners of $212,500.00 of bonds secured by a mortgage upon an irrigation system and its appurtenant water rights, located in Bannock

County, Idaho. The irrigation system was constructed by the Portneuf-Marsh Valley Irrigation Company, an Idaho corporation, under the legislation commonly known as the Carey Act, and according to the terms of a contract of construction between the Portneuf-Marsh Valley Irrigation Company and the State of Idaho. These irrigation works were completed in the year 1915 and at that time accepted by the State and by the settlers who had purchased water rights therein, and were conveyed to the petitioner, Portneuf-Marsh Valley Canal Company, also an Idaho corporation, composed of the settlers owning water rights in the system. It has been owned and operated by the petitioner, Portneuf-Marsh Valley Canal Company, since its completion.

This suit was brought by respondents, as trustees for the bondholders, to foreclose the mortgage on the irrigation system and to foreclose also the pledge of certain collateral deposited with them as additional security for the bonds.

In the trial court the Portneuf-Marsh Valley Irrigation Company and the Portneuf-Marsh Valley Canal Company were the defendants, and the appellees in the Circuit Court of Appeals. As we are informed and believe, the Portneuf-Marsh Valley Irrigation Company does not seem to have been considered by the petitioner as a party to the proceedings in this Court.

For convenience, the latter company will be hereinafter referred to as the "construction company" and the petitioner, Portneuf-Marsh Valley Canal Company will be hereinafter referred to as the "operating company."

Notwithstanding the petitioner has in its brief rather fully set out the facts and circumstances surrounding

the case, it is perhaps desirable that respondents, at the risk of some slight repetition, re-state the facts considered pertinent.

On June 3, 1908, the construction company entered into a contract (R. 250) with the State of Idaho providing for the construction of an irrigation system to water a certain area of arid lands in Bannock County, Idaho, which lands had theretofore been segregated and set apart to the State under the federal legislation known as the Carey Act.

The contract between the State and the construction company, after describing the irrigation works to be constructed, recites (R. 257) that the construction company, to the extent of the capacity of the irrigation works:

> "Will sell or cause to be sold to the person or persons filing on any of the lands herein described or to the owners of other lands not described herein but which are or may be susceptible of irrigation from their canal system by good and sufficient contract of sale with right of possession and enjoyment by the purchaser pending its fulfillment, a water right or share in said canal for each and every acre filed upon or purchased from the State or acquired from the United States or held in private ownership."

The price at which the construction company was permitted to sell water rights or shares in this system was not to exceed $35.00 per acre for "Carey Act" lands, and not to exceed $25.00 per acre for state school lands and other lands (R. 258). The terms of sale were to be $3.00 per acre or per share cash, and the remainder in nine equal annual installments bearing interest at the rate of 6 per cent per annum.

Section 9 of the state agreement (R. 259) provides as follows:

"TRANSFER OF POSSESSION AND MANAGEMENT OF CANAL

"It being necessary to provide a convenient method of transferring the ownership and control of said canal and irrigation works from the said party of the second part herein to the purchasers of said water rights in said canal and for determining their rights among themselves and between said purchasers and the party of the second part herein and for the purpose of operating and maintaining said canal during the period of construction and afterwards, and for the purpose of levying and collecting tolls, charges and assessments for managing said canal and for the management and operation thereof, it is hereby provided that as soon as said lands are ordered thrown open for settlement, a corporation to be known as the Portneuf-Marsh Valley Canal Company, Limited, shall be formed at the expense of the party of the second part, the Articles of Incorporation of said company to be approved by the Attorney General of the State of Idaho; that the authorized capital of said corporation shall be twenty thousand (20,000) shares, which amount is intended to represent one share for each acre of land which may hereafter be irrigated from said canal. All persons who, prior to the formation of such corporation, have purchased or acquired water rights from said second party for the irrigation of lands embraced in this contract, and being then the owners of such rights or shares, shall be entitled to receive and have issued to them, shares in such corporation to be formed, equal in number to the water rights or shares

of water then owned and held by such persons, and the remainder of the capital stock of such corporation shall be issued to the party of the second part in consideration of the covenants and agreements herein contained in order to enable it to deliver to purchasers of water rights the shares of stock representing the same. Said shares of stock, however, shall have no voting power and shall be without force or effect until they have been sold or contracted to be sold to the purchasers of land under said irrigation works.

"At the time of the purchase of any water right after the formation of said corporation, there shall be issued to the purchaser thereof one share of the capital stock of said corporation for each acre of land entered or filed upon. That the said party of the second part herein shall, in case said water rights or shares of stock are not fully paid for, require the endorsement and delivery to it of said stock, and shall at the same time require of said purchaser an agreement that until thirty-five per cent (35%) of the purchase price of said stock has been paid, the said party of the second part therein shall vote said stock in such manner as it may deem proper at all meetings of the stockholders of said corporation."

Other pertinent provisions of the contract with the State were as follows:

"MORTGAGE

"The right, title and interest of the second party in the said works and irrigation system and in the said lands may be mortgaged, as provided by the said Acts of Congress and the laws of the State of Idaho, hereinbefore referred to; the form of such mortgage to be approved by the Attorney General of Idaho (R. 264).

"EXISTING LAWS PART OF CONTRACT

"It is hereby understood and expressly agreed that this contract is made and entered into by virtue of the provisions and subject to all of the conditions of an Act of Congress, commonly known as the Carey Act, approved August 18, 1894, and the acts amendatory thereto, and the laws of the State of Idaho, accepting the terms and provisions of the said 'Carey Act,' and the contract between the United States and the State of Idaho segregating from the public domain the lands herein designated as Carey Act lands, and that such laws and contract are as much a part of this contract as if specifically herein set forth." (R. 265.)

Since the state and federal laws referred to in the preceding paragraph of the State contract are of considerable importance in connection with this case, the pertinent sections thereof are printed as an appendix to this brief for convenient reference by the Court.

After some little construction work had been done upon the irrigation system by the construction company, the State of Idaho, on or about September 7, 1908, opened to entry the Carey Act lands (R. 103), and at about this time water rights for approximately 10,000 acres of land were sold by the construction company.

Just prior to the land opening the Portneuf-Marsh Valley Canal Company, Limited (the operating company) was organized, its articles of incorporation being approved by the Attorney General of Idaho in accordance with paragraph 9 of the State contract referred to above. This corporation was created as a convenient method (R. 259) of transferring the ownership and control of the irrigation

works from the construction company to the settlers. All the shares of stock in this corporation were originally to belong to the construction company in accordance with the State contract, as the consideration for the construction of the irrigation works. It was to receive the return of the money spent in the construction of the works, with reasonable interest thereon, through the sale of these shares of stock at a price and upon the terms of payment defined in the State contract. The form of contract under which the construction company sold water rights to the settlers at the time of the land opening and the form of stock certificate representing such water rights is shown in Plaintiff's Exhibit C-1 (R. 125).

Prior to the sale of the first water rights, that is, in August, 1908, the stockholders and board of directors of the construction company authorized a bond issue in the amount of $300,000.00, to be secured by a mortgage or trust deed upon the water appropriations and the irrigation works then being constructed. The trust deed, in addition to mortgaging the water rights and irrigation works, provided that before any bonds should be issued there should be pledged with the trustees for the bondholders to whom the mortgage ran, as additional collateral security, water right contracts in an amount aggregating, at par, one and one-half times the amount of bonds certified by the trustees as authorized to be sold (R. 39). These water right contracts were, of course, the contracts evidencing the sale to settlers of water rights or shares of water stock. Each settler's contract, to the extent of the deferred payments to fall due thereon, represented a lien upon the settlers' land of special statutory status in Idaho, each being in form a mortgage on the land and

appurtenant water right, and operating also as a pledge of the water stock contracted to be purchased under the terms of the water contract. In other words, the settler in contracting with the construction company for the purchase of a water right gave, under the terms of the purchasing contract, a lien upon his land and a pledge of his water stock to secure the deferred payments; and the construction company, to secure the trust deed above referred to, and as additional security for its bond issue, assigned to and pledged with the trustees these individual settlers' contract liens and the water stock in connection therewith.

Bonds in the amount of $212,500.00 were sold and marketed between the years 1909 and 1911 under this arrangement, and a large number of individual settlers' contracts, with the accompanying pledged water stock, was deposited with the trustees as additional collateral for the bonds as required by the trust deed.

In the year 1915 the irrigation project was completed and accepted by the State of Idaho, and by the settlers. There were certain minor disputes on details of construction, and these were compromised by the construction company paying to the operating company $31,000.00 to remedy and repair alleged defects and insufficiencies. While the project was not turned over as completed until the year 1915, it had been so far completed as to permit the delivery of water therefrom since the year 1912. The State contract provided that the construction company might vote the settlers' stock in the operating company until 65 per cent of the purchase price of water stock was paid, but the construction company had long before the year 1915 waived this right to vote the stock (R. 150,

f. 230). In 1915 when the irrigation system was accepted by the settlers and the State as completed, a detailed agreement was entered into between the construction company and the operating company defining precisely the terms of the acceptance and defining the conditions of settlement of any controversies existing between them (R. 151). It provided for reducing the project, which was originally designed to irrigate 20,000 acres, to 14,000 acres, it being stipulated in the settlement agreement that the construction company might sell water rights or water stock of the operating company to the amount of 14,000 shares, but no more (R. 155). The settlement agreement also provided for an extension of time to the settlers with respect to the payments becoming due on their water contracts (R. 153).

The settlement agreement was submitted to the stockholders of the operating company for ratification and was ratified practically unanimously; following which, on March 25, 1915, the operating company and the construction company jointly petitioned the State Land Board to ratify and approve the settlement and accept the system (R. 150). This was accompanied by petitions to the State Land Board to the same effect, signed by a large number of individual settlers or stockholders of the operating company (R. 160-162).

On March 31, 1915, action was taken by the State Land Board granting the petitions (R. 163).

Accordingly, since the spring of 1915, the irrigation system has been operated by the operating company. On January 1, 1917, by delivery of deed dated August 1, 1916 (R. 171), the irrigation works and water rights in their entirety were conveyed by the construction com-

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pany to the operating company, subject to the trust deed securing the bonds (R. 174).

Following the settlement agreement under which the project was accepted and conveyed to the operating company, the construction company entered into "new form" water contracts with practically all the settlers. This new form contract provided an extension of time for payment as promised in the settlement agreement between the construction company and the operating company (R. 153). The new form water contract is shown in plaintiff's exhibit C-2 (R. 133).

Subsequent to 1915 no interest was paid upon the bond issue. Certain of the settlers made default in the payment of the principal and interest due on their water purchase contracts. Some of these settlers failed to comply with the State law with reference to settlement and cultivation of the lands included in their Carey Act entires and their entries were, by petition and application of the operating company, cancelled by the State Land Board (R. 164-170). The settlers upon perhaps 2,000 acres were thus eliminated.

In some cases the trustees for the bondholders, upon default being made in the payment on said water contracts, instituted foreclosure proceedings and upon foreclosure sale acquired the lands described in the individual water contracts of certain settlers and the water stock in connection therewith. Approximately 1,000 acres of land with the accompanying water stock have been thus foreclosed upon by the trustees, and are held under sheriff's deeds (R. 139-140).

In other cases, during the progress of or in contemplation of foreclosure proceedings, quit-claim deeds to the

land and water stock were taken from the settlers and the trustees hold this property likewise in substituted pledge as security for the bondholders. Approximately 800 acres of land with the accompanying water stock have been taken over by the trustees in this manner (R. 144-147).

The respondents are the successors in office of the original trustees for the bondholders, and, as stated above, brought this action to foreclose the mortgage upon the irrigation system and to foreclose also in the same action the pledge of the additional collateral they hold in pledge, consisting (1) of individual water contracts of settlers with the accompanying water stock, and consisting (2) of the land and appurtenant water stock acquired in foreclosure proceedings against individual settlers or acquired by quit-claim in connection with foreclosure proceedings and now held in pledge.

The construction company, though entering its appearance, presented no answer or defense. The operating company is the present owner of the irrigation works, and being impleaded in the suit in order to require it to set up the nature of its claim on the mortgaged property and the water stock held by plaintiff in pledge, it answered that by reason of the necessity of operating and maintaining the canal system and distributing the waters therefrom, it had levied each year upon its stockholders certain assessments upon the capital stock; that in the case of a large number of stock certificates the assessments had not been paid and the stock had been advertised and sold at public auction, at which sales the operating company became the purchaser (R. 71-72). That the amount of the delinquent assessments upon such stock aggregated $80,252.98, and that by reason of the failure and refusal

of the several stockholders of the construction company and of the respondents as pledge holders of the stock to pay the assessments so levied, the title to said stock, by reason of such sales, had passed to the defendant operating company, together with a proportionate interest in the irrigation system (R. 72).

The question presented then for decision to the lower court was the question of the relative priority of the lien or claim of respondents and of the operating company on that proportionate interest in the irrigation works and water rights represented by the stock which was claimed by the operating company. Respondents' claim is by virtue of its general mortgage on the entire irrigation system authorized in August, 1908, and by virtue of pledge to them of the water stock as security for the outstanding bonds. The operating company's claim is by virtue of its stock assessments and the proceedings for the enforcement thereof. The operating company did not insist upon being decreed the absolute ownership of the water stock claimed to have been purchased by it for delinquent assessments or the absolute ownership in the proportionate interest of the irrigation system represented thereby, but it claims a lien thereon subject to redemption in the amount unpaid on delinquent assessments, with interest and penalties.

After hearing all the issues and contentions thus made, the trial court made its decree awarding the operating company a prior lien on the certain several parcels of the water stock in controversy, the liens upon the several parcels of stock being in varying sums based on the unpaid assessments, the aggregate amount being $89,417.64 (R. 337-339). The decree directed that upon the sale of the

pledged property in accordance with the decree, the above sum should be paid to the operating company before any money was paid to respondents in satisfaction of the bonds (R. 342).

Upon appeal to the Circuit Court of Appeals for the Ninth Circuit, the decision was modified so as to give to the respondents here the prior lien. The opinion of the Circuit Court of Appeals appears in the record beginning at page 350, and the decree of that Court is at page 358. The opinion is reported in the case of Brown vs. Portneuf-Marsh Valley Irrigation Company, 5 Fed. (Second) 895. The opinion of the trial court, the District Court for the District of Idaho, is reported in 299 Fed. 338 (R. 295-314). The decree of the trial court appears in the record at pages 315 to 344. The particular portion of the decree of the District Court of Idaho which is in issue here is paragraph 6, at pages 337 to 339 of the record.

The case is here for consideration on writ of certiorari.

STATEMENT OF THE ISSUES

Respondent's contentions are as follows:

(1) That under the provisions of Section 3019, Idaho Compiled Statutes, a Carey Act construction company is by express terms given a first and prior lien for the purchase price of its water rights on the water stock and the land to which it is appurtenant, and that no sale of stock by the operating company to enforce delinquent assessments can be of any force or effect to divest the construction company or its successors or assigns of such prior statutory lien.

(2) That with respect to the water rights, the water contracts in controversy operate as purchase money

mortgages, and under the provisions of Section 6351, Idaho Compiled Statutes, "have priority over all other liens created against the purchaser subject to the operation of the recording laws."

(3) That respondents as mortgagees of the entire corpus of the property under a mortgage given long prior to any claim of the operating company on the stock have, independently of their pledge of the water contracts and stock collateral, a prior lien on the proportionate interest in the irrigation works represented by the water stock in controversy.

(4) That the by-laws of the operating company, its contracts and the deed under which it received the irrigation works subject to the mortgage recognize in express language that "all shares of the Canal company (operating company) • • • shall be held subject to the rights of Portneuf-Marsh Valley Irrigation Company, Limited, until the amount due such company, its successors or assigns shall have been fully and finally paid."

(5) That the lien of the operating company under the respective assessments and the sales held to enforce the collection thereof is void for the following reasons:

(a) That each of the assessments under which the operating company claims was void because admittedly in excess of 10 per cent of the amount of the capital stock named in the articles of incorporation of the Portneuf-Marsh Valley Canal Company, contrary to the express provisions of Section 4734, Idaho Compiled Statutes.

(b) The respective assessments are invalid as statutory assessments, because the respective orders levying

such assessments fail in almost every respect to comply with the provisions of Section 4736, Idaho Compiled Statutes.

(c) The respective sales held to enforce these assessments are invalid because they are not in accordance with Sections 4737-4747, inclusive, of Idaho Compiled Statutes.

(d) Because all the assessments on any parcel of stock, except the first assessments, to-wit: that assessment for which the stock was initially sold to the operating company, are void on account of the fact that a corporation is powerless to assess stock in its treasury.

(e) Because any assessments levied between the 2d day of December, 1918, when the operating company became defunct for failure to comply with the laws of the State of Idaho relating to corporations, until the 14th day of September, 1921, when it was reinstated, are void because the operating company was a defunct corporation, and its directors were powerless to levy assessments (R. 148-149).

ARGUMENT

The brief of petitioner discusses only one phase of the issues here involved. It repeats and elaborates merely one aspect of the trial court's opinion. It is felt that the real brief for petitioner and the one upon which it in fact relies, is the exhaustive and persuasive opinion of the trial court found in the record at pages 295 to 314, inclusive. It is felt that the fallacy of the trial court's conclusions can be demonstrated. Since neither the opinion of the Circuit Court of Appeals (R. 350-358) nor the brief of petitioner in this Court deal with all the matters set out

in the trial court's opinion, it seems that the most orderly arrangement of this discussion would be to follow the order in which the issues are set forth and discussed in the trial court's opinion. After doing this, we shall particularly consider the specific point emphasized in the petitioner's brief.

RESPONDENTS' LIEN FOR THE PURCHASE PRICE OF THE STOCK IS SUPERIOR TO ANY POSSIBLE LIEN OF THE OPERATING COMPANY BY REASON OF MAINTENANCE ASSESSMENTS.

It is clear, of course, that the only method by which the construction company or its assigns can be reimbursed for the cost of building the irrigation system is through the sale of water rights or shares represented by the stock of the operating company. In order to facilitate the reclamation of arid lands under the Carey Act, it is provided by Act of Congress (29 Stat. 413) that:

> "A lien or liens is hereby authorized to be created by the State to which such lands are granted and by no other authority whatever, and when created shall be valid on and against the separate legal subdivisions of land reclaimed, for the actual cost and necessary expenses of reclamation and reasonable interest thereon * * *"

In the act of the Idaho Legislature accepting the benefits of the Federal Carey Act it was provided:

> "Any person, company or association furnishing water for any tract of land shall have a first and prior

lien on said water right and land upon which said water is used, for all deferred payments for said water right; said lien to be in all respects prior to any and all other liens created or attempted to be created by the owner and possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and satisfied, according to the terms of the contract under which said water right was acquired."

Section 3019, Idaho Compiled Statutes.

It is plaintiff's contention that the above statute is decisive of the issues presented here for decision; that this staute, being at all times a part of the law of the State, was written into and became a part of the State contract; and became a part of every other contract or document in this record.

The learned trial court held that the above statute has no application to the issues herein. The written opinion on this point (R. 302-305) may be analyzed as follows:

Section 3019, Idaho Compiled Statutes (relating to priority of lien of construction company for purchase of water right), does not apply in this case because:

(1) The lien of the operating company was not "created or attempted to be created by the owner or possessor of the land."

(2) The statute can have application only to suits foreclosing the individual water contract liens, and this is not a suit of that nature as respects the pledged and unforeclosed water contracts.

(3) As to water contracts foreclosed on or held by plaintiffs under quit claim deed equivalent to fore-

closure the lien has been fully extinguished with the water user's obligation to pay, and plaintiffs have no lien thereon. The lien has been merged in the judgment of foreclosure.

We respectfully urge that the reasoning of the trial court's opinion is in error with respect to each of the three bases for its conclusion as given above.

THE PRIORITY OF LIEN ACCORDED BY SECTION 3019 IS A GENERAL PRIORITY SUBJECT ONLY TO STATE AND COUNTY TAXES.

With respect to conclusion No. 1 on this point of the court's opinion, we urge that the statute gives a *general* priority to respondents' lien, and a fair construction of the statute should not limit its application only to other liens "created or attempted to be created by the owner or possessor of the land." The first clause of the statute quoted above establishes generally the priority of the lien. Is it not more reasonable to construe the second clause:

> "said lien to be in all respects prior to any and all other liens created or attempted to be created by the owner and possessor of said land,"

not as a limitation on the general priority of the lien, but as an attempt by the Legislature to emphasize and point out the powerlessness of the owners of the land to create a lien which should take precedence over the general priority theretofore in the section established. The preceding and succeeding clause clearly relate to a general priority of lien. The trial court considers alone the

middle clause of the trio quoted above and construes this middle clause as a limitation on the other two. We think a reading of the whole statute clearly signifies the intent of the Legislature to establish a general prior lien.

There is, of course, the implied exception of taxes levied by the sovereign for the purposes of government. That is an implied exception that is always read into statutes imposing or authorizing liens. Subject to that sole exception, it would seem the reading of the entire statute discloses an intention on the part of the Legislature to grant a lien prior to all other liens.

The Circuit Court of Appeals in reversing the Trial Court deemed this the only point necessary to consider, and disposed of it as follows:

> "The learned Judge of the Court below held that that section of the Idaho statute is not applicable to the case • • •
>
> "The first and main reason assigned by the Trial Court in its opinion for such holding is that the priority of liens to be given to the person or company furnishing the water for the irrigation of the land is only over liens 'created or attempted to be created by the owner or possessor' of the land.
>
> "We think that construction wholly inadmissible. • • •
>
> "The intermediate clause, 'Said lien to be in all respects prior to any and all other liens created or attempted to be created by the owner and possessor of said land,' merely gives expression to what would otherwise be clearly the legal effect of the section."

In the petition for writ of certiorari in this case it was claimed that there was a conflict between the reversing opinion and the construction put upon this statute by

the Supreme Court of Idaho in the case of Trust & Savings Bank vs. Werner, 36 Idaho 601.

In that case the court was considering the relative priority of the lien of the sovereign state for taxes upon land covered by a Carey Act contract, and the lien imposed by such Carey Act contract under the provisions of Section 3019. And the Supreme Court of Idaho in the Werner case said:

> "Under C. S. Section 3019, supra, the only liens to which the lien of a Carey Act contract is superior are those created or attempted to be created by the owner and possessor of the land, and this is not a limitation upon the power of the sovereign to create a lien."

We do not think that this expression can properly be construed as a construction of the statute by the Supreme Court of Idaho binding on this Court or the Circuit Court of Appeals in a case where the paramount right of the sovereign to impose tax liens is not involved.

> Carroll vs. Lessees of Carroll, 16 Howard 275, 14 L. ed. 936.

The language of Mr. Chief Justice Marshall in Cohens vs. Virginia, 6 Wheat. 399, is illuminating and just:

> "It is a maxim not to be disregarded that general expressions in every opinion are to be taken in connection with the case in which those expressions are used. If they go beyond the case they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented. The reason of this maxim is obvious. The question actually before the Court is investigated with care

> and consideration in its full extent; other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated."

In statutes having relation to the priority of liens as between private persons there should always be read an implied exception of tax liens which arise out of the necessities of government in organized society. An expression of the Idaho Supreme Court in seeking additional reasons for its highly proper decision in the question then before it should not be considered as a binding construction of a statute involving the priority of liens as between private interests. The opinion in the Werner case expressly and clearly shows that with respect to the lien on the *water right* as distingusihed from the land, the intention of the holding is indubitably to protect even as against taxes the lien upon the *water right* granted under a Carey Act contract; so the court in the Werner case referred with approval to the case of Bennett vs. Twin Falls North Side Land & Water Company, 27 Idaho 643, 150 Pac. 336, in language as follows:

> "In the latter case this court held that the purchaser of a tract of Carey Act land at tax sale may be subrogated to all the rights of the entryman *so far as the water right is concerned* and may procure the title thereto by making the payments provided for by the water contract and in accordance with its terms."

THE LIEN OF THE OPERATING COMPANY FOR ASSESSMENTS IS A LIEN CREATED BY THE OWNER OF THE LAND.

Even though this Court should feel that a proper construction of Section 3019, Idaho Compiled Statutes, limits the priority there expressed "to any and all other liens created or attempted to be created by the owners and possessors of said lands," we think it susceptible of demonstration that the lien on the water stock claimed by the operating company is, in fact, a lien created by the owners of the land. Each settler, in becoming a stockholder of the operating company, by an implied contract obligated himself to pay the assessments as levied.

> "The relation existing between a corporation and its stockholders and between the stockholders inter se is one of contract, in which the charter and by-laws of the corporation, the pertinent statutes of the state, and the settled law of the land are embodied." 14 C. J. 843, Sec. 1283.

Not only by contract necessarily implied growing out of his relation as stockholder of the operating company, but also by express agreement in the contract of purchase of the water stock, the purchaser in each case expressly agreed to pay the maintenance charges. The language is as follows:

> "The purchaser agrees to pay said charges in advance at the office of the Portneuf-Marsh Valley Canal Company, Limited, on the first day of April of each year without notice." (R. 127.)

Is it not beyond any question the act of the settler in assuming the obligation to pay the maintenance and his

default in not so paying it which has created the lien upon the water stock now claimed by the operating company?

Assume that the stockholder, while on his land, contracts a bill for groceries, or contracts a bill for lumber for building a house, and fails to pay these bills. Under the Idaho laws, and under the laws of most states perhaps, the storekeeper could levy an attachment on the settler's land and water stock; or the lumber dealer could file a materialman's lien on the house and so much of the land as is necessary for its use and occupancy. Could it be seriously urged that such liens would not under the State statute quoted above be inferior to respondents' lien for the purchase price of the water stock. Could it be successfully argued that such attachment lien or such materialman's lien was not one "created by the owner of the land"? Would the owner of the land not have created such a lien by his assumption of the obligation to pay and his subsequent default in not so paying the bill of the storekeeper or the bill of the lumber dealer? Could it be urged that because the settler did not vote for the sheriff who levied the attachment or help elect him, or because he did not vote for the Judge who granted the lien foreclosure, such liens were not within the purview of the statute quoted as being inferior to respondents' lien on the land and water right for the purchase price of the water right? Yet such was the trial court's reasoning. The trial court said:

> "Neither nominally or actually was the assessment or sale for delinquency made by the owners of the land; both were made by the corporation, acting through its board of directors, an entity entirely dis-

tinct from the land owner, although he was a holder of some of its stock." (R. 302.)

It must be remembered that the operating company is *really the settlers themselves*. Acting together and in the aggregate they elect their own directors. These directors are their agents, and the agents of no one else. Even though it may not be shown by the record, as the trial court points out in its opinion, that any particular settler voted for the directors who levied the assessments, did not the stockholders in the aggregate elect such directors? Is it not too narrow a construction of this statute to contend that, because no single stockholder can be shown to have elected the directors who levied and enforced the assessments, the stockholders acting in the aggregate can by the action of their own agents in voting assessments, and then by their individual acts in the non-payment of assessments, and then again by the acts of their own agents, the directors, through the sale of the stock for delinquent assessments, extinguish the lien of the construction company for the purchase price of the stock, and thus acquire *in group ownership* a lien prior to the lien of the construction company representing the purchase price of the water rights. This Court will look through and beyond the entity of the operating company to the individuals who compose it. The operating company was a mere instrumentality for transferring the ownership, operation and control of the irrigation works after its construction and its sale to the individual settlers.

The trial court even intimates (R. 303) that the construction company might have been responsible for the levying of the assessments through the delegation to it

of voting power upon the stock, as provided in the settler's contract. Such an assumption is entirely unwarranted by the facts. Long before the year 1915 the construction company had waived the voting power on the settlers' stock accorded by the State contract and the individual settlers' contract, even though 65 per cent of the purchase price remained unpaid.

In the joint petition of the construction company and the operating company to the State Land Board, dated March 25, 1915, it is said (R. 150) that the voting power of the construction company upon the stock had long ago been waived so that each settler was voting his own stock either in person or by proxy. In the new form contracts entered into by the settlers in 1915 providing for an extension of time of payment, it was indeed provided that while the settler was in default with respect to the payments, the construction company might vote the stock (R. 135), but the trial court's inference that the construction company, or these respondents, had authority to or did vote the stock at the election of directors, and thus indirectly impose the assessments, is entirely unjustified.

In the first place, the presumption would be that there was no default in the payment under any given settler's contract unless the contrary was shown. The contrary was not shown. In the second place, the by-laws of the operating company expressly provide that the *unsold* stock shall have no voting power (R. 287). Thirdly, under section 6 of Article 1 of the by-laws, no stockholder who is indebted to the operating company may vote his stock at any meeting. The shares of stock in controversy having delinquent assessments thereon could not,

therefore, under this by-law be voted by anybody. With respect to many of the water contracts and shares of stock held in pledge by respondents, the payments of the installments of the purchase price have been fully kept up and are not now and never have been delinquent. Many indeed are fully paid for. Since under the by-laws of the operating company neither the construction company nor the respondents could vote the stock upon which there were delinquent assessments nor could vote the stock upon which payments had not been in default nor the stock paid for in full, the inference of the trial court above stated is unfair and erroneous, as shown by the evidence.

Can it be supposed for a moment that this litigation would be pending at all if the trial court's intimation were correct, that the respondents are controlling the construction company and the latter, through its ability to vote stock, is in control of the operating company.

The lien of the operating company, if it has a lien, arises directly out of the settler's obligation to pay assessments and his default with respect to that obligation. The lien is thus created "by the owner and possessor of the property." It would seem that any fair construction of Section 3019 should and must include an act of omission of the owner or possessor of the land as well as an act of voluntary commission. If its application were restricted to liens directly created by the owner or possessor of the land, such as junior mortgages, and not made to include attachments, judgments, mechanics' or materialmen's liens, the lien of the operating company here under consideration, and in short any lien arising out of the failure of the settler through acts of omission or otherwise to dis-

charge his obligations, then this statute would really be like the prophecies of the witches to Macbeth:

> "That palter with us in a double sense,
> And keep the word of promise to our ear
> And break it to our hope."

SECTION 3019 HAS APPLICATION TO THIS SUIT AS WELL AS ANY OTHER SUIT INVOLVING THE PRIORITY OF LIENS.

The second reason, according to the trial court's opinion, why the statute cannot be invoked by respondents in this case, is that:

> "The trustees are here seeking to foreclose only the lien of the trust deed. They are not as pledgees attempting to foreclose the liens of the water contracts; to such proceedings the several settlers would, of course, be indispensable parties; and in any view of the statute in question, it can have application only to such liens and such proceedings. It, therefore, follows that insofar at least as concerns the stock embraced in the 5,495.2 shares that pertains to water contracts which are still outstanding and have never been taken over by the plaintiffs, the statute has no application." (R. 304.)

Let us analyze the pleadings for a moment and see if this is a correct statement. The complaint seeks to foreclose the mortgage upon the irrigation works. But it seeks also to foreclose the pledge of the water stock pledged and deposited for the security of the bondholders; not indeed as against the individual settlers, but against the construction company and the operating company. The complaint alleges:

"That plaintiffs are informed and believe and therefore allege that said Portneuf-Marsh Valley Canal Company, Limited, has from time to time heretofore levied certain pretended assessments upon its capital stock • • • that among the shares of stock upon which said pretended assessments were sought to be levied are the shares of stock held by these plaintiffs as collateral security • • • that said defendant Portneuf-Marsh Valley Canal Company, Limited, claims that by reason of said pretended liens and certain other proceedings for the enforcement thereof that it has a claim or lien upon said shares of stock or some of them prior and paramount to plaintiffs' claim and lien thereon." (R. 22.)

And the prayer of the complaint is, in part:

"That the defendant Portneuf-Marsh Valley Canal Company, Limited, a corporation, may be required to answer and set forth the nature of its claim, interest in or lien upon the property herein described, if anythere be." (R. 25.)

The operating company came in, answered and made issue setting up its assessments (R. 71-72), and goes on to say in its answer:

"This defendant claims that by reason of the failure and refusal of the said stockholders and the said Portneuf-Marsh Valley Irrigation Company, Ltd., and these plaintiffs as pledged holders of the said stock to pay the assessments levied against the said stock, that the title to said stock, by reason of said sale, has passed to this defendant, together with a proportionate interest in the said irrigation system."

and asks for affirmative relief, namely: that its title to said stock be quieted in it (R. 73-74).

The trial court in its decree granted the prayer of the operating company to the extent of decreeing it a prior lien for these assessments so pleaded. To do this, as the opinion shows, it has taken into consideration and invoked in the operating company's favor every general statute of the State of Idaho relating to the power of a corporation to levy assessments upon its stockholders. Why is Section 3019 barred? In a controversy involving priority of liens, where the issue is thus made and decided, should not every statute of the State defining the respective priorities of the liens be equally applicable?

It is true that the respondents might have brought an action upon such of the pledged water contracts as were in default for the foreclosure of the lien and might in such suit have impleaded the operating company, requiring it to set up the nature of its claim; but in the suit at bar the operating company was the owner of the legal title to the irrigation works against which foreclosure was sought under the mortgage. It likewise claimed a specific lien upon the parcels of stock held in pledge by respondent trustees. The suit for the foreclosure of the mortgage and for the foreclosure of the pledge of the water stock: namely, this action, seemed the natural and proper place to test the validity of the defendant operating company's claim to an interest in the irrigation works. The latter was an indispensable party.

Even if it were possible that timely objection might have been made by the operating company to this method of testing the question involved, no such objection was made. The issues were framed, the cause was submitted, and judgment given in favor of the operating company upholding the priority of its lien as against the lien of

respondents. Under these circumstances, it is difficult to conceive why Section 3019, supra, Idaho Compiled Statutes, should not be considered as applicable the same as any other statute bearing upon the right of either party.

THE PRIORITY OF LIEN UPON THE WATER STOCK ACCORDED BY SECTION 3019, IF IT APPLIES AT ALL, APPLIES EQUALLY TO THE STOCK ACQUIRED BY THE RESPONDENTS THROUGH FORECLOSURE AND QUIT-CLAIM DEED.

With reference to the water stock which previous to this suit had been taken over by the respondents through individual foreclosure or quitclaim, the trial court in its opinion said:

> "But, however that may be, plainly the liens of the water contracts originally issued to the settlers have been fully extinguished, and the statutory provision under consideration could no longer have any application. • • • So that if we were to take the view of the statute contended for by the plaintiffs, there would be no lien superior to the right of the operating company under its assessment sales, for there is nothing at all due from the settlers to the promoting company or the plaintiffs, and neither it nor they have any lien at all by virtue of the water contracts, either superior or inferior." (R. 305).

It seems to us that in so deciding the trial court denied the respondents the benefit of the most usual and ordinary rules relating to the merger of a lien in a judgment or in title. True it is that by the foreclosure of the individual settlers' contracts and the consequent bidding in of the

property upon which the lien was held or through the analagous procedure of taking quitclaim deeds, there has been an extinguishment of the settlers' obligation to pay. But does it, or should it, follow that the priority of the lien by virtue of which the respondents acquired such title is thereby extinguished? It is a familiar principle in equity that a lien will not be considered as merged in a judgment or in a deed where the effect of such merger would be to validate a junior claim.

In the case of Factors & Traders Ins. Co. vs. Murphy, et al., 111 U. S. 738, 28 L. ed. 582, the Supreme Court of the United States says:

> "Where an incumbrancer, by mortgage or otherwise, becomes the owner of the legal title or of the equity of redemption, the merger will not be held to take place if it be apparent that it was not the intention of the owner, or if, in the absence of any intention, said merger was against his manifest interest."

Likewise in U. S. vs. Stowell, 133 U. S. 1; 33 L. ed. 555, it is held:

> Quitclaim deed by mortgagor to mortgagee passes only equity of redemption where the rights of a third party intervene.

The rule is thus stated in 19 R. C. L., 489, "Mortgages," Sec. 282:

> "Unless an intention to merge with knowledge of a junior lien or liens clearly appears, no merger results from the acquirement by the holder of the senior mortgage of the interests of the mortgagor, and the senior mortgage retains its priority as against all junior or intervening liens upon the mortgaged prop-

> erty; and this is true whether the interest of the mortgagor is the legal title to the land or the mere equity of redemption. It is only when the fee and the lien center in the same person, without any intervening claims, liens or equities, that a merger of the title and the lien will take place. Accordingly, when a trust deed creditor buys the trust subject and takes a conveyance therefor from his debtor, his lien is not thereby so merged in his estate as to make his entire estate in the land subject to an intervening lien; equity will preserve the trust lien for his protection."

Besides, it is expressly declared in Section XV of the trust deed (R. 52), that upon any default of the settlers' contract and the foreclosure thereof by the trustees, the trustees may become the purchasers at any foreclosure sale of the lands covered by any such water contracts, *"and thereupon said lands and waters shall become subject to the lien hereof (i. e. the trust deed) to the same extent as if said property had been specifically named herein."*

It would, therefore, clearly appear that such priority as is afforded the lien upon the water stock for the purchase thereof by the provision of Section 3019, Idaho Compiled Statutes, applies with the same force to the shares of stock foreclosed upon by the respondents or acquired by quitclaim deed as to other shares which in connection with water contracts were pledged with them as security for the bondholders.

And it seems superfluous to point out that these shares of stock and the water contracts having been pledged to respondents as security for the bondholders, that the plaintiffs have succeeded at least to all the rights of the construction company, and are entitled to assert at least any legal claim that the construction company might

assert. As we shall hereafter point out, the respondents are *legally and equitably* in a stronger position than the construction company.

We think, therefore, that the learned trial court was in error with respect to each branch of the reasoning set forth in the opinion as the basis for holding that Section 3019, Idaho Compiled Statutes, is inapplicable to respondents' lien; first, because the lien of the operating company was in fact "created or attempted to be created by the owner of the land," even if the second clause in the statute should be construed as a limitation on the general priority of lien asserted by the first and last clauses of the statute; secondly, because the court in this suit determined the relative priority of lien of the parties with reference to the stock in controversy and should take into consideration Section 3019 as well as any other statute bearing on the controversy submitted and decided. Thirdly, because the foreclosure of individual water contracts or the taking of quitclaim deeds did not result in a merger to the extinguishment of such prior lien as Section 3019 affords.

THE PRIORITY ADOPTED BY SECTION 3019 HAS NOT BEEN WAIVED BY RESPONDENTS.

The learned trial court, after concluding that Section 3019, Idaho Compiled Statutes, has no application to the controversy, for the reasons analyzed above, next concluded that even though this section of the statute were applicable, it has been waived by the contract between the State and the construction company (R. 250), and the articles of incorporation (R. 275) and by-laws (R. 278) of the operating company.

An analysis of the trial court's reasoning is as follows:

Even if Section 3019 were otherwise applicable, the benefits thereof have been waived on the part of respondents by the agreements and by-laws because:

(a) The State contract provides for organization of an operating company which may levy assessments.

(b) Settlers' water contracts provide for levying of assessments by the operating company.

(c) The by-laws provide that all issued stock should be subject to assessment, the only exception being stock held by the construction company before sold to the settlers and made appurtenant to the land.

(d) That by-law of the operating company, Section 8, Article 5 (R. 287) upon which respondents rely does not apply because:

(1) Ambiguous and therefore must be construed against them;

(2) This by-law refers only to

(a) Right to lien as provided by state contract and settlers' water contract;

(b) Right of construction company to assign water contract as in pledge;

(c) The right to vote stock under certain conditions as provided in the state contract and settlers' contract;

(d) Possibly other rights.

(3) The relation of the parties and importance of the matter preclude a construction of this by-law as covering the matter in controversy. (R. 305-309.)

We have thought it necessary to thus analyze and diagram the trial court's reasoning in order clearly to point out what we feel to be its error.

It is indeed true that the State contract and all of the pertinent documents recognize the right of the operating company to levy assessments upon the settlers for the maintenance and operation of the irrigation works. The cost of distributing the water to their lands could be met in no other convenient way. But the system having been completed and turned over to the settlers for operation and the distribution of the water among them for irrigation, it was by no means intended that the costs of the distribution of water for the benefit of the settlers should operate directly or indirectly to deprive the construction company or its assigns of the right to be reimbursed for the cost of building the system. The water contracts were sold to settlers on annual deferred payments. The purchasers by annual payment on the purchase price of their water rights gradually acquired an interest therein to the extent of such payments. We have no hesitancy in saying that the operating company can, by proper and valid assessments in accordance with the statutes, the State contract and its own charter and by-laws, impose assessments which by proper proceedings can be made to *divest the settlers' interest in such water rights.* That was the theory and intent of the machinery provided for the handling of Carey Act projects. Under the terms of the State contract the shares of stock of the operating company were, prior to sale by the construction company to the settlers (R. 260) to be "without voting power and to have no force or effect"; that is to say, prior to sale by the construction company to the settlers the shares were not to be subject to assessment at all; after such sale they were necessarily subject to assessment, the obligation to pay assessments being the obligation of the purchaser or

landowner. Upon the landowner's failure to pay the same, the operating company might, if it proceeded properly, impose a lien for assessments which might operate *to divest the settler of his contract interest.* The reasons which made the shares of stock non-assessable before sale to the settler apply with equal force to the preservation of the lien for the purchase price after sale. Being non-assessable before sale, the same considerations require that if after sale on a deferred payment contract it should be necessary for the seller to repossess them for default in payment of the purchase price they should again be not subject to assessment until resold. It seems to us clear beyond any doubt that by consenting to the assessment of the shares of stock for the necessary expenses of distribution of water after sale to the stockholder the construction company in no manner waived the priority of its lien.

On the other hand, it must be conclusively presumed that all the contracts, articles of incorporation, by-laws and pertinent documents *were entered into by the parties subject to and in the light of the priority afforded by Section 3019, Idaho Compiled Statutes.* We think it is a uniform conclusive presumption that parties contract and intend to contract with reference to and in subordination of pertinent statutes governing such transactions instead of in waiver of them.

But in this case the matter is not left to presumption. The State contract, which recites that the shares of stock after sale to the purchasers may be subject to assessment by the operating company (R. 260), provides expressly (R. 265):

> "That this contract is made and entered into by virtue of the provisions and subject to • • • the

> laws of the State of Idaho accepting the terms of the said Carey Act • • • and that such laws • • • are as much a part of this contract as if specifically herein set forth."

We think also that the charter of the operating company and its by-laws are clearly subject to and must be construed in connection with all applicable existing State statutes, including Section 3019.

But to make assurance doubly sure, the by-laws of the operating company were made to contain the following provision:

> "SEC. 8. *Shares Held Subject to Rights of the Portneuf-Marsh Valley Irrigation Company, Ltd.* All shares in this corporation shall be held subject to the rights of the Portneuf-Marsh Valley Irrigation Company, Limited, until the amount due to such company, its successors or assigns, shall have been fully and finally paid, as provided in the contract between said corporation and the purchaser of shares, and as provided in the contract between the said Portneuf-Marsh Valley Irrigation Company, Limited, and the State of Idaho." (R. 287.)

Section 5 of the same Article VIII of the by-laws provides for the levying of assessments, taxes or tolls, such assessments, taxes or tolls to be enforced by the *shutting off of the water of the user until such tax is paid.* (R. 285-286.)

Section 6 of the same article of the by-laws provides for statutory assessments; that is to say, assessments upon the stock under the general corporation laws (R. 286).

Section 7 provides expressly that the unissued stock of the operating company, until sold to settlers, shall not be subject to any tax, assessment or charge whatever.

Then comes Section 8 of the same article of the by-laws (R. 287), quoted above, which expressly preserves the priority of lien of the irrigation company for the purchase price of the shares as against any assessments that might be levied. Its juxtaposition to the sections relating to assessments and its general context precludes it from having any other meaning. It was written in the light of Section 3019, Idaho Compiled Statutes, and that statute is entitled to be added to it and read into it just as much as if it were written out at length as a part of this by-law.

The trial court held that this by-law is inapplicable to the controversy the same as the statute is inapplicable: first because it is ambiguous, and, therefore, must be construed against the respondents, pointing out (R. 305-306 *f.* 442), that the construction company prepared the State contract, the settlers' contract, the articles of incorporation, and the by-laws of the operating company.

In the first place we think these inferences and the force sought to be given them are unjustified by the record and by the statutes. The State of Idaho, through its Land Board, acting for the settlers, had at least as important a voice in the making of these instruments as did the construction company. Enough cases involving Carey Act projects in Idaho have come before this Court for it to know that all of these enterprises are cast in substantially the same mold; that is, forms prescribed and insisted upon by the State. Section 3030, Idaho Compiled Statutes, provides that the State Board of Land Commissioners (now the State Department of Reclama-

tion) shall prescribe suitable rules for the conducting and handling of Carey Act business. The State contract provides (R. 260) that the Articles of Incorporation of the operating company should be approved by the Attorney General of the State of Idaho. The settlers' contract (R. 125) provides on its face that it is made subject to the approval of the State Board of Land Commissioners, which approval must, prior to delivery, be endorsed thereon. The mortgage sought to be foreclosed in this action is one which, according to the terms of the State contract (R. 264-265) must be approved by the Attorney General of Idaho.

We think, therefore, that the counsel, in persuading the trial court that all of the pertinent instruments were fashioned by the construction company, and, in a sense, foisted upon the unprotected settler, are hardly justified by the facts and the record. The contrary is rather the case. The construction company was required to submit to forms and practice established by the State Land Board under rules applicable to this and all other Carey Act projects, and its assigns should not be held to have waived the protection of the Idaho laws to any further extent than is clearly shown by the instruments applicable.

The trial court next concludes that the section of the by-laws which respondents urge protects the priority of their lien relates to other matters and does not have the force and effect contended for by respondents; it relates in the trial court's opinion (R. 308), merely to "the rights of the construction company, as such rights were defined by the water contracts and the State contract, that is, the right of a lien as so defined, the right of the construction company to assign as in pledge, as provided in the

contracts, and the right to vote under certain conditions as provided in the contracts, and possibly other rights."

But the by-law was quite unnecessary to accomplish these objects. If such construction were put upon its meaning and intent, it might just as well have been omitted. "The right of lien" was imposed by the settlers' water contract and by the contract and State statutes. No by-law adopted by the canal company could possibly have interfered with it; likewise, "the right of the construction company to assign as in pledge" was expressly provided for in the settlers' water contracts (R. 130), in language as follows:

> "This contract may be assigned by the company and thereupon the payment of principal and interest as so provided shall be due and payable to the assignee."

The right of assignment would have existed, even without this express provision. In the same way the right of the pledgee to vote the stock under certain circumstances was expressly and fully defined in the settlers' agreement (R. 130-135); also in the State contract (R. 260).

The by-law was unnecessary to accomplish any of these things. We most earnestly submit that the construction company had each and every right specified by the trial court if the by-law had been omitted. But the by-law was obviously put there to protect the rights of the construction company and its assigns. Instead of being construed as a totally superfluous and unnecessary provision, it should, we think, be construed to accomplish the purpose that its context and position indicates. It is among the provisions of the by-laws relating to the assessments on stock. It follows that provision of the by-laws which

provides that the *unissued stock* shall not be subject to assessment, and it expressly states that all stock shall be held subject to the rights of the construction company until it had received its pay in full therefore. The rights referred to clearly mean its right to priority of lien.

The importance of this by-law is repeatedly emphasized and recognized in all the later documents and transactions. It is declared in the by-laws themselves to be irrepealable without the consent in writing of the construction company (R. 288-289). In the agreement made when the project was turned over to the settlers for operation the context of it was repeated (R. 159) and the operating company covenanted not to repeal it without the consent of the construction company in writing. Finally when the deed of conveyance from the construction company to the operating company was executed, it was again declared therein to be irrepealable and the language was again in the deed itself repeated "that all shares in said operating company shall be held subject to the rights of the construction company • • • until the several installments of the purchase price due the construction company, its successors and assigns, shall have been fully and finally paid." (R. 176.)

The shares in controversy are now claimed to be held by the operating company. If so, we insist that they are held subject to respondents' rights, as assignees of the construction company. According to that by-law, it makes no difference by whom the shares are held, whether by the stockholders of the operating company or by the operating company itself. They must and should be held subject to respondents' rights. In this controversy respondents ask that the appellant operating company be

compelled to give effect to its own by-laws. If its stock is now, through sales for delinquent assessments, "held" by it, the respondents require that it be so held, "subject to their rights" as assignees of the construction company until the amount due on the water stock "has been fully and finally paid." If the claim of the operating company is, as the trial court decreed, prior and paramount to that of respondents, the stock is not held "subject to the rights of the construction company and its assigns," but the rights of the construction company and of respondents, its assignees, are made subject to the rights of the operating company.

VALIDITY OF THE CANAL COMPANY'S ASSESSMENT

The argument so far has been devoted to a discussion of the priority of the assessments upon the assumption that they are *valid assessments*, but we shall now proceed to point out wherein the specific assessments asserted by the operating company are, in fact, void.

At the outset of this part of the discussion, it must be reiterated that, according to the by-laws of the operating company, there are two methods of assessments permissible: one method is set forth in Section 5, Article V, of the by-laws (R. 285). This method is in the nature of the imposition of a toll or service charge for the delivery of water. The method of notification and of enforcement of assessments of this nature is provided in that by-law. It requires notice of the assessment to be given by publication in a newspaper for a period of two weeks, and provides that in case of refusal to pay the assessment the board of directors may refuse to deliver water to the

holder of the stock until the assessment is paid. With respect to these tolls, charges or assessments provided for in Section 5 of the by-laws, the only method of enforcement and collection is by shutting off the water.

Section 6, Article V of the by-laws (R. 286), provides as follows:

> "SEC. 6. *Statutory Assessments.* In addition to the methods provided in these by-laws for raising revenue and money for the use of the company, the directors may levy assessments upon the stock of the corporation as provided by the laws of the State of Idaho, but no stock shall be regarded as issued within the meaning of such laws, unless the certificate therefor contains a description of the land to which such stock and the water to be delivered thereunder shall be applied and made appurtenant."

The above by-law was the section under which the assessments of the operating company asserted in this action were levied. They were sought to be enforced by publication of notice of delinquency and the sale of the stock, and the operating company claims title by virtue of such sales to itself. There is no pretense or claim that the assessments under which petitioner claims are other than "statutory assessments" levied under the general corporation laws.

Since, then, the operating company has sought to avail itself of the general powers of corporations to levy assessments as set forth in the Idaho Statutes, we contend generally that the assessments must be *under the statutes and in accordance with these statutes*, and not *in defiance of them*.

THE PRETENDED ASSESSMENTS WERE VOID BECAUSE IN EXCESS OF TEN PER CENT OF THE AMOUNT NAMED IN THE ARTICLES OF INCORPORATION OF THE PORTNEUF-MARSH VALLEY CANAL COMPANY.

The sections of the Idaho Statutes relating to assessments on stock of corporations are as follows:

> "SEC. 4733. *Directors May Levy Assessments.* The directors of any corporation formed or existing under the laws of this state, after one-fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form, *and to the extent* herein provided.
>
> "SEC. 4734. *Limitation on Assessments.* No one assessment must exceed 10 per cent of the amount of the capital stock named in the articles of incorporation *except in the cases in this section otherwise provided as follows:*
>
> "1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount.
>
> "2. The directors of railroad corporations may assess the capital stock in installments of not more than 10 per centum per month, unless in the articles of incorporation it is otherwise provided.
>
> "3. The directors of fire insurance corporations may assess such a percentage of the capital stock as they deem proper."

The capital stock named in the articles of incorporation of the Portneuf-Marsh Valley Canal Company is 20,000 shares of the par value of $1.00 each, making the total capital stock named in the said articles of incorporation $20,000.00, of which ten per cent would be $2,000.00 (R. 276).

Defendants' Exhibits Nos. 1 to 16 (R. 178-250) show on their face that each of the pretended assessments under which the operating company claims its right was far in excess of the statutory limitation, the smallest of the assessments being fifty cents per share, which, based only on the issued stock (amounting to 11,582 shares, according to the allegations of paragraph 7 of the operating company's answer, R. 69), would yield $5,791.00.

It was stipulated at the trial in open Court that each of the assessments was in excess of the limitation imposed by the Idaho Statutes (R. 104).

> "MR. SNOW: May it be admitted that each one of the assessments referred to in these exhibits was in excess of ten per cent of the amount named in the articles of incorporation of the defendant Portneuf-Marsh Valley Canal Company?
>
> "MR. MCDOUGALL: Yes. And at the same time, I will ask for the admission that it was not in excess of ten per cent of the actual sale value of the shares of stock, which has been admitted to be $35.00 per share.
>
> "MR. SNOW: I think that may be admitted."

It is the contention of appellants that the pretended assessments, being from three to ten times larger than the statutory limitation, are absolutely void. It has been the contention of the operating company, on the other

hand, that the statutory limitation does not refer to limitations on the assessment of paid-up capital stock, but refers only to "calls" for unpaid installments on subscribed capital stock, and secondly, that if the limitation does refer to assessments on paid-up capital stock, the excessive assessments are not void, but merely irregular.

As to the first contention, the statute quoted above seems to be as clear as language can make it, that the ten per cent limitation applies only to assessments upon paid-up capital stock. The second subdivision of Section 4734, Idaho Compiled Statutes, expressly permits assessments or "calls" upon unpaid capital stock to be "for the full amount *unpaid* on the capital stock." In other words, it is one of the three exceptions to the general limitation. In a matter so clear the quoting of authorities would seem to be superfluous. Nevertheless, authority is not lacking.

The California statutes relating to assessments upon corporation stock are identical with those of Idaho quoted above (California Civil Code, Sections 331 and 332). In the case of Brown vs. San Gabriel River Rock Company, 22 Cal. App. 682, 136 Pac. 542, it is said:

> "Under the express provisions of Civil Code, Section 332, corporation stock may be assessed to pay debts without reference to whether it is paid up or not, the only difference being that paid-up stock is only subject to the extent of ten per cent in any one assessment, while the unpaid stock may be assessed for the full amount unpaid thereon."

The Court will, of course, keep clearly in mind that as to the operating company itself the stock was at all times

fully paid up. The construction of the irrigation works was the full consideration for all of it. We will presently discuss this in detail.

Since it is clear, therefore, that the statutory limitation applies to assessments made in the case at bar, we come to the question of whether such assessments are void or merely irregular. The general rule is that a corporation, in the absence of statutory authority, has no power to levy assessments on paid-up capital stock, and that where there is such statutory authority to levy assessments on fully paid capital stock and collect the same by forfeiture and sale of the stock for delinquent assessments, the power to levy assessments and sell the stock must be exercised strictly in accordance with the mode prescribed by statute. In the case of Cochran vs. Sonora Mining Company, 8 Ida., at page 661, the Court says:

> "All the authorities to which our attention has been called hold, not only a substantial, but a strict compliance with the statute must be had, or the sale is void."

And again on rehearing of the same case, it is said (8 Ida. 664):

> "In case of the levy of an assessment by a copora-tion and proceedings to sell stock on account of delinquency in paying such assessments, the proceeding is a special, summary one by which citizens are deprived of their property; and, in order to make the sale valid, all of the requirements of the statute must be substantially complied with:

The above case quotes with approval I Cook on Corporations, 4th edition, Section 129, where it is said:

"The general method of forfeiting shares for non-payment of calls is usually prescribed in detail by the statute authorizing the forfeiture. In the earlier cases there may be observed some tendency to hold that a substantial, in distinction from a strict, compliance with the requirements of the statute, is all that is necessary to a valid forfeiture. But in later cases, English and American, it is plainly disclosed, and it may be taken as a settled rule, that the validity of the forfeiture and sale of the shares of a subscriber in arrears depends upon a strict and formal compliance with the requirements of the enabling statute."

In the case of Pacific Fruit Company vs. Coon, 107 Calif. 447, 40 Pac. 543, it is said:

"The (trial) court further found . . . that said assessment exceeded ten per cent of the whole capital stock named in the articles of incorporation, and greatly exceeded the indebtedness of the incorporation; and further found, as a conclusion from the foregoing facts, 'that said pretended assessment was not levied in accordance with the laws of the State of California,' and therefore was void. . . . If this finding is justified by the evidence, the judgment and order should be affirmed, since an assessment of $5.00 per share on 8,295 shares amounts to $41,475, which exceeds 10 per cent of the whole capital stock named in the articles of incorporation by $16,475, contrary to Section 332 of the Civil Code, which provides: 'No one assessment must exceed ten per cent of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for . . .'"

In Thompson on Corporations, Second Edition, Volume 4, Section 4815, it is said:

> "Statutes authorizing assessments on corporation stock are in derogation of the common law and are strictly construed and are not to be extended beyond the plain meaning and import of their terms. It is a rule of frequent application that assessments can only be levied and enforced in strict compliance with the statutory requirements • • • Where assessments to a certain amount are authorized either by statute or by charter, a corporation cannot levy an assessment in excess of the amount specified."

The North Dakota statutes relating to assessments on capital stock of corporations were taken verbatim from California, as were the Idaho statutes.

In the case of More vs. Courier News, 29 North Dakota 385, 151 N. W. 2, there is a full discussion of these sections of the California and North Dakota laws, and the decisions construing them. The Court says:

> "We have already set forth Section 4571, under which this limitation is claimed, and it is apparent that no assessment must exceed 10 per cent of the amount of the capital stock named in the articles of incorporation, except in the cases otherwise provided • • • The words • • • seem to be susceptible of one meaning."

In the case of Great Falls & Conway Railroad Co. vs. Copp, 38 N. H. 124, the Court says:

> "No assessment can be made on the stockholders of a road beyond what the charter provides for or the law applicable to the subject authorizes, and all

> assessments assumed to be made which would not come within such authority are invalid."

See also State vs. Morristown Fire Assn., 23 N. J. Law, 195.

It seems, therefore, from the foregoing (there being no authority to the contrary under similar statutes of which the writers of this brief are aware), that the assessments in question were illegal and void and that all proceedings for the enforcement thereof were a nullity.

The trial court in its decision failed to discuss the matter of the invalidity of the assessments on the ground that they were excessive, although the matter was urged with emphasis. It was of the opinion that the various contentions relating to the invalidity of the assessments must fail, on account of Section 4749, Idaho Compiled Statutes, which provides:

> "SEC. 4749. *Actions to Recover Stock Sold.* No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity in the assessment, irregularity or defect in the notice of sale or in its publication, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid or be due thereon, and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced within six months after such sale was made."

The inapplicability of the above section to assessments if invalid because they are excessive is apparent. If a

party whose stock is sold under an invalid, excessive assessment should have to first pay or tender to the corporation the sum for which the stock was sold, being the amount of the excessive assessment, together with all subsequent excessive assessments which might have been levied, with interest thereon, no remedy whatever would be provided for the unlucky stockholder, and the statutory limitation on assessments would be a gruesome joke. Prior to the decision of the learned trial judge, it had been uniformly held by all courts that the statute last quoted applied to mere minor irregularities and not to assessments inherently invalid.

In the case of Wall vs. Basin Mining Company, 16 Idaho 314, it was held that the assessment was invalid because the stock certificates contained the words "fully paid and non-assessable," constituting an enforceable contract between the corporation and the stockholder who held such stock.

The Court there expressly held that such assessment was not irregular, but void, and that the provisions of Section 4749, Idaho Compiled Statutes, supra, did not apply.

In the case of Mantle vs. Jack Waite Mining Co., Limited, 24 Idaho 613, there was a provision in the contract between the promoters of the corporation and the corporation itself, that the promoters' stock was assessable up to 25 cents a share before any other stock of the company was subject to assessment. An assessment having been levied on the other stock in breach of this provision, it was again held that the assessment was void and that the provisions of Section 4749, supra (referred to therein as Section 2766 of the former State Code, being identical

with the present Section 4749, Idaho Compiled Statutes), did not apply.

In the case of Cheney vs. Canfield, 158 Calif. 342, 111 Pac. 92, the pretended assessment there under consideration had been levied at a meeting of a board of directors, irregularly called and held. The Court said, with reference to Section 347 of the California Civil Code, which is practically identical with Section 4749 of the Idaho Compiled Statutes:

> "The sections referred to only apply where there has been some irregularity in the assessment or irregularity or defect in the notice of sale, or the sale itself. The assessment in question here, as we have seen, was not merely an irregular assessment; it was absolutely void."

In the case of Herbert Kraft Co. Bank vs. Bank of Orland, 133 Calif. 64, 65 Pac. 143, the Court said:

> "This is not an action to recover the stock sold; neither is the action for the purpose of recovering damages for its conversion. Section 347, Civ. Code, applies only where the action is for the recovery on the ground of irregularity or defect in the notice of sale, or defect or irregularity in the sale. The assessment in this case was not an irregular assessment merely, but a void one. If one-fourth of the capital stock had not been subscribed, the defendant bank had no power to levy the assessment."

See also Kohler vs. Agassiz, 99 Calif. 15.

Nor is this case an action to recover the stock sold or damages for its conversion. As is clearly set out in the trial court's opinion, the operating company does not claim the absolute ownership of the stock in question,

nor does the court's decree establish such ownership. The operating company merely claims and was decreed a lien on the stock by virtue of its pretended assessments and the proceedings for the enforcement thereof, and the proceedings in this case merely relate to the priority of the parties' respective liens.

It is respectfully submitted that the operating company's pretended lien, being based upon an assessment admittedly in defiance of the state statutes, and therefore void, must be a nullity.

AS TO THE CONSTRUCTION COMPANY AND ITS ASSIGNS, THE STOCK ON ITS FACE IS "FULL PAID AND NON-ASSESSABLE."

The stock certificates show on their face that as to the construction company or its assigns, the stock is full paid and non-assessable. The stock of the operating company was originally issued to the construction company fully paid as the consideration for the construction of the irrigation works (State contract, R. 260). With respect to that company, both under the State contract, the by-laws of the canal company and the construction company, it was "Full paid and non-assessable." When the certificates were originally issued they were so marked plainly on their face.

Under the laws of Idaho, the issuance of stock marked "full paid and non-assessable" to a party constitutes a contract making the stock non-assessable (Wall vs. Basin Mining Co., 16 Idaho 314; Mantle vs. Jack Waite Mining Company, Limited, 24 Idaho 613).

The trial court inquires (R. 310) whether in view of the articles of incorporation and by-laws permitting as-

sessments, the words "full paid and non-assessable" appearing on the "decorative border" of the stock certificate was not a "joker." After making such inquiry, it concludes that the form of stock certificate was not an evidence of bad faith, but that the words "full paid and non-assessable" merely meant that the stock was fully paid and was not subject to calls for the installments of the purchase price. We think the trial court was misled into entirely misconceiving the purpose and intent of the words "full paid and non-assessable" as printed on the stock certificate. As originally issued, to-wit: issued to the construction company in payment for the construction of the works, they were full paid and also non-assessable for all purposes. That much at least is conceded by petitioner.

The contract with the settler was not a contract with the corporation issuing the stock, but a contract evidencing the *resale of the stock*. In the hands of the construction company or its assigns it was indeed full paid and non-assessable, and so intended to be. In reselling the stock to the settler, the settler agreed in the contract of purchase that it should be, while the settler was enjoying the benefits of the stock, subject to assessment in the manner in the settlers' contract prescribed for the expense of distribution of water and maintenance and operation of the system. The articles of incorporation and by-laws of the operating company sought to give effect to this limited right of assessment while in the hands of the settler in accordance with the general theory underlying the whole arrangement. But it was a limited right of assessment only.

The stock as held in pledge by the construction company remained, so far as its lien was concerned, "full paid and non-assessable." When it was pledged to respondents, they had a right to rely on the words, "full paid and non-assessable," placed thereon as part of the contract. We know of no principle of law under which the bondholders or the trustees acting for them were charged with constructive notice of the by-laws of the company, even if the by-laws at the time or subsequent thereto sought to make the stock generally assessable in the hands of everyone.

STOCK IN TREASURY OF THE CORPORATION CANNOT BE ASSESSED

Attached to the operating company's answer as schedule "B" (R. 78) is a list showing the total amount claimed to be owing as delinquent assessments from the various parcels of stock. As shown by the testimony of the Secretary of that company (R. 100-101; 107), these charges upon the several parcels of stock are computed on the basis of showing the original delinquent assessment plus costs and 20 per cent penalty, and to this has been added, to make the total lien claimed the amounts of the various assessments levied subsequent to the time when, as claimed, the operating company became the owner of the stock at the original sale to it for delinquent assessments. It clearly appears that the bulk of these charges are made up of assessments levied while the stock was treasury stock of the operating company. According to the testimony of the secretary of the operating company, there has been no delivery of water on this stock after it became originally delinquent (R. 108). Certainly there can be no valid

statutory assessments on the stock held in the treasury of the corporation. It would hardly seem, either, that valid assessments in the nature of tolls or service charges could be levied against this stock which was in the treasury of the corporation. This stock, according to the operating company's theory, was not entitled to demand or receive water; and, according to the testimony, it actually received no water.

ALL ASSESSMENTS LEVIED BETWEEN THE 2D DAY OF DECEMBER, 1918, AND THE 14TH DAY OF SEPTEMBER, 1921, ARE VOID, BECAUSE THE OPERATING COMPANY WAS DURING THAT PERIOD A DEFUNCT CORPORATION.

On the 2d day of December, 1918, the charter of the operating company was forfeited by failure to pay corporation license taxes, or, in failure in lieu thereof, to file with the Secretary of State an annual statement showing such corporation to be exempt from the payment of tax (R. 149). From that period until the 14th day of September, 1921, the operating company was a defunct corporation, at which later date it was reinstated, in accordance with the statutes, after compliance with the necessary conditions for reinstatement (R. 148; also 104).

While it is true that the operating company was, in the year 1921, reinstated, it is provided by Section 4787, Idaho Compiled Statutes:

> "The rehabilitation of a corporation under the provisions of this chapter shall be without prejudice to any action, defense or right which accrued by reason of the original forfeiture."

It ought hardly be necessary to cite extensive authority that on the lapse of a corporation's charter, the legal power of its officers and directors cease. It is true that under the Idaho Statutes the directors, as trustees for the defunct corporation, may act for it in winding up its affairs; but only with respect to winding up its affairs. Certainly the levying of assessments by a board of directors for distributing water and carrying on the usual business, acting entirely without authority of the law, and indeed under circumstances where their acts under the statute (Section 4789, Idaho Compiled Statutes) constitute a misdemeanor, cannot be held to afford the basis for a valid subsisting lien on the stock of the corporation. Between December, 1918, and September, 1921, all acts and proceedings as to assessments were entirely void and without effect.

Fletcher Cyc. Corporations, Vol. 8, Sec. 4468;
Houston vs. Utah Lake, Land, Water & Power Co., 55 Utah 393, 187 Pac. 174;
Aalwyns Law Institute vs. Martin, 173 Cal. 21, 159 Pac. 158;
Ransome-Crummey Co. vs. Superior Court, 205 Pac. 446;
Sharp vs. Eagle Lake Lumber Co., 60 Cal. App. 386, 212 Pac. 933.

THE ORDERS LEVYING THE ASSESSMENTS ARE INVALID ON OTHER GROUNDS

Section 4736, Idaho Compiled Statutes, provides:

"The order levying an assessment must specify the amount thereof, when, to whom and where payable; fix the day subsequent to the full term of publication

> of the assessment notice, on which the unpaid assessments will be delinquent, not less than 30 nor more than 60 days from the time of making the order levying the assessment; and a day for the sale of delinquent stock, not less than 15 nor more than 60 days from the date the stock is declared delinquent."

An examination of the defendant's Exhibits 1 to 16, inclusive (R. 178-250), clearly shows that the provisions of the statute have in no respect been complied with. As to the assessment of February 23, 1915 (Defendant's Exhibit 1, R. 178), there is in evidence no order of the board levying the assessment.

Counsel for the operating company admitted in open court, upon objection to the introduction of evidence as to the sale proceedings based on the last mentioned assessment, that the operating company was unable to find "any minutes of the board meeting at the time it recites that the assessment was levied," but that the notice of sale and notice of delinquency are offered "for what they are worth." (R. 105.)

The trial court nevertheless held this to be a valid assessment the same as the others!

In only a few of the orders levying the assessment is any date of delinquency specified at all, and in all the orders of assessments in which the date of delinquency is specified (with the exception possibly of Exhibits 7 and 8, R. 210, 213), the date of delinquency is not in conformity with the statute. Moreover, with respect to the assessments shown in Exhibit 8, to-wit: that of September 2, 1919 (R. 213), not even the amount of the assessment is specified. Exhibit No. 9 (R. 218) shows a pretended assessment in which the order fixes neither date of pay-

ment, date of delinquency, nor date of sale, or when, to whom, or where the assessment is payable.

Nevertheless, the trial court declared all these assessments valid and directs their payment, whether, in fact, there is any evidence of an assessment or not, or whether the amount of the assessment is specified or not.

THE ARGUMENT OF PETITIONER'S BRIEF

In the preceding portion of this argument, we have discussed those points dwelt upon by the trial court in his opinion and which are not covered by petitioner's brief in this Court. It has seemed necessary to respondents to do this, because the trial court adopted apparently in toto the persuasive contentions of petitioner and set them forth in a voluminous opinion. Many points covered in this opinion are in no manner discussed by petitioner's brief before this Court, and our only opportunity of attentively analyzing all of petitioner's contentions has been to discuss them consecutively in the order set forth in the opinion. We will now discuss the argument of petitioner's brief in this Court. Petitioner argues as follows:

(1) That the federal Carey Act statute (29 Stat. at large, 413) in itself does not create any lien in respondents' favor.

As to this respondents agree. The only significance of the federal statute is the aid it may give in the interpretation of the state statute. The state statute was enacted under the authority and in pursuance of the plan set out in the federal statute, and the federal statute indicates

the general theory and intent of protecting the investment of those reclaiming Carey Act lands.

> (2) That the state statute, Section 3019, Idaho Compiled Statutes, in itself imposes no lien independent of the settlers' water contract.

To this we also agree. The significance of the state statute is also, of course, only that it defines the purpose, extent and priority of the lien which is imposed by the settlers' water purchase contract.

> (3) Petitioner argues that the basis of respondent's lien is the settlers' water contract solely; that this lien is in form an ordinary mortgage governed by the laws of Idaho.
>
> "Upon any default on the part of the individual contract holder the construction company had the right to foreclose its mortgage on the water and the land. If it foreclosed its mortgage and obtained title to the water and the land through that means, then it stepped into the shoes of the individual who had previously owned it." (Petitioner's Brief, 40-41.)
>
> "It follows that, as counsel for petitioners view the case, the Court is not called upon to construe Section 3019, Idaho Compiled Statutes." (Petitioners' Brief, 44.)

These seem to us naive contentions.

In the first place, the mere form of the lien (i. e., that it is in terms a mortgage) would seem to have no bearing on the question of its priority as defined in Section 3019. Whatever form the lien took, it would seem that Section 3019 or any other pertinent statute must be read into it as part of the contract.

In the second place, we have always thought that under the laws of Idaho or any other state, a mortgage lien relates back to the time of its creation so as to cut off intervening rights. A mortgage does not "step into the mortgagor's shoes" at the time of the foreclosure. But on the other hand he acquires whatever rights the mortgagor had at the time of the creation of the mortgage lien.

This is so apparent that we must assume that petitioner's contentions in this regard must not be taken literally as applying to secondary liens in general, but as applying only to the burdens of liens of stock assessments which accrued subsequent to the stock purchase.

Viewed in this light, petitioner's contention is based in part on the premise that by sale to the settler the stock became inseparably and unalterably appurtenant to the land. The premise is faulty if it were material. Such is not the law as construed by the Supreme Court of Idaho.

In the case of Bennett vs. Twin Falls etc. Co., 27 Idaho 652, the Idaho Court was construing a Carey Act settlers' water purchase contract which contained provisions making the water appurtenant to the land identical with the language of the settlers' contract in this case and upon which language counsel here relies. The Court there said:

> "It is evident from the provisions of the settlers' contract that the purpose was not to make an absolute conveyance of the water right to the plaintiff's predecessor, since it provides, among other things, that no water shall be delivered to the purchaser from said irrigation system while any instalment, principal or interest is due and unpaid from the purchaser to the company. The state contract provides that pending the fulfillment of the contract between the entryman and the Land & Water Company, the

> entryman may have the right to the possession and and enjoyment of the water right, and the entryman's contract also provides that if he does not comply with the terms of his contract, he is not entitled to the right to the enjoyment or the possession of such water, nor can it reasonably be urged that the title of the water right passes to the purchaser upon the execution of his contract with the Land & Water Company, for in the present case, as well as in practically every Carey Act project, there was no water right in existence at the time of the execution of water right contracts. There is nothing in the contract to vest the water right in the entryman unless he makes payment for the same, or that makes the water right appurtenant to any land."

But for the purpose of further analysis of petitioner's argument, let us waive the faulty premise and assume that the water was made inseparably appurtenant to the land and was mortgaged to the construction company as such appurtenance. Let us leave out of consideration Section 3019 and examine the applicable mortgage laws of Idaho.

So far as the water right is concerned, the settlers' contract created a purchase money mortgage.

Water rights in Idaho are real property or real estate.

> Section 3056, Idaho Compiled Statutes.
> Nelson vs. Parker, 19 Ida. 727.
> Clark vs. Paddock, 24 Ida. 142.

This is true of the water rights sold by Carey Act construction companies to Carey Act settlers under contract.

> Bennett vs. Twin Falls, etc. Co., 27 Ida., at page 651.

Section 6351, Idaho Compiled Statutes, provides as follows:

> "A mortgage given for the price of real property at the time of its conveyance has priority over all other liens created against the purchaser subject to the operation of the recording laws."

Here the language is that the purchase money lien shall have priority "over all other liens created against the purchaser." This language quite precludes any specious contention such as petitioner makes with respect to Section 3019, Idaho Compiled Statutes, supra, that the lien is prior only to those arising from the direct voluntary act of the purchaser.

This brings us to what we think is a controlling aspect of this case. With respect to the water right, respondents' lien is a purchase money mortgage and should be governed by the equitable principles generally applicable to such liens.

> "A mortgage given for the unpaid balance of purchase money on a sale of land simultaneously with a deed of the same and as part of the same transaction is entitled to the highest consideration of a court of equity and takes precedence of prior judgments and all other existing and subsequent claims and liens of every kind against the mortgagor to the extent of the land sold."
>
> 41 C. J. 528, Sec. 470.
>
> "A purchase money mortgage is what the term implies and is predicated on the theory that on the simultaneous execution of the deed and mortgage the title to the land does not for a single moment rest in the purchaser, but merely passes through his hands and without stopping rests in the mortgagee. It

follows, therefore, that no lien of any character can attach to the title of the mortgagee."

Keith vs. Cropper, 196 Iowa 1179.

This is the doctrine of instantaneous seizin. The title does not stop beneficially in the purchaser, but rests always in the mortgagee. Dower rights, and homestead rights do not attach. Liens against the purchaser prior in time even to the purchase money mortgage are cut off.

Kneen vs. Halin, 6 Ida. 621.

In the hands of the construction company, the water stock sold to the settler was subject to no assessments. The same sort of title or interest in the irrigation works which the construction company held was the interest to which its lien attached. That is, a non-assessable interest. No intervening lien created by or against the purchaser voluntarily or involuntarily on his part could intervene to cut off the vendor's rights.

We have followed the third subdivision of petitioner's argument, not vouching for its soundness. We do not, of course, agree with counsel that Section 3019, Idaho Compiled Statutes, need not be considered by the Court in determining the issue here presented. We think, on the other hand, that Section 3019 is the controlling statute. We merely point out that if, as petitioner contends, respondents' lien is governed by the Idaho Statute relating to purchase money mortgages, petitioner's petition is no whit improved. In avoiding Scylla petitioner runs upon Charybdis. Section 6351, Idaho Compiled Statutes, relating to purchase money mortgages, should be considered in pari materia with Section 3019 as indicating the nature of the lien contemplated by the Legislature. Carey

Act construction companies under the statutes relating to such enterprises were authorized to create and build property and sell interests therein for their reimbursement. The lien upon the property so sold is and should be at least of equal dignity with that of a purchase money mortgage as applied to the facts of this particular case.

THE CLAIM THAT RESPONDENTS HAVE NO HIGHER RIGHT THAN THE CONSTRUCTION COMPANY.

Petitioner's brief reiterates to the point of tedium that respondents have no other or higher rights than the construction company; and it repeatedly urges upon this Court's attention a sentence from respondents' brief quoted in the trial court's opinion indicating that such was the respondents' own contention before the trial court. But that such has not in fact been respondents' position before the trial court or elsewhere is shown in other parts of the trial court's opinion. For instance, in discussing one point the trial court said:

> "There is nothing in the suggestion touching this point that the plaintiffs have a right superior to that of the construction company . . ."
> (R. 311, f. 451.)

In one aspect of the case especially, which was disposed of by the trial court in accordance with the view of counsel for the operating company, it is felt that proper weight is not given to the position of respondents as mortgagees under a mortgage on the entire irrigation works authorized in the year 1908 and given and recorded in 1909 while these works were still in process of construc-

tion and long before they were turned over to the operating company for operation.

Section 5639, Idaho Compiled Statutes, provides as follows:

> "SEC. 5639. *Consumer's Title Not Affected by the Transfer of Ditch.* When any payment is made under the terms of a contract, by means of which payment a perpetual right to the use of water necessary to irrigate a certain tract of land is secured, said water right shall forever remain a part of said tract of land, and the title to the use of said water can never be affected in any way by any subsequent transfer of the canal or ditch property or by any foreclosure or any bond, mortgage or other lien thereon; but the owner of said tract of land, his heirs or assigns, shall forever be entitled to the use of the water necessary to properly irrigate the same, by complying with such reasonable regulations as may be agreed upon, or as may from time to time be imposed by law. And said payment for said water right shall be a release of any bond or mortgage upon the canal property of the person or company from whom such right is purchased or their successors or assigns, to the amount of such water right thus purchased and paid for • • •"

Since obviously under this section a mortgage upon an irrigation system in Idaho is inoperative with respect to subsequent sales of water rights made by the owner of such works to the extent of payments received by the owner thereon, a safeguard was sought to be provided by an arrangement in the trust deed permitting sales of water rights by requiring the sales agreements to be deposited with the trustees for the bondholders in an amount of par or face value of such water purchase agreements

equal to one and one-half times the principal of the outstanding bonds (R. 38-39). These provisions were quite certainly inserted in the trust deed in special view of Section 5639, Idaho Compiled Statutes, supra. Excepting only to the extent of rights acquired by actual settlers through payments on the purchase price of the water rights, the trust deed was in all respects an ordinary mortgage on the entire corpus of the property. The rather unusual provisions of the trust deed in this respect were only in the interest of settlers who actually paid, and in the interest of the mortgagees on account of the rights of such settlers under Section 5639. These provisions were not, we submit, intended to permit intervening liens of third parties.

The trust deed further provided that if upon default in payment by the settlers who purchased water rights the trustees foreclosed upon the water contracts deposited as collateral and bid in the property at sale, then "the lands and water become subject to the lien hereof (i.e., trust deed) to the same extent as if said property had been specifically named herein" (R. 52). It seems clear to us, therefore, that the mortgage, subject only to the right of each individual settler to the extent of his payments upon his purchased water right, covers the irrigation works and water rights in their entirety. That this general mortgage lien upon the corpus of the entire property dating at the latest from November 27, 1909, the date of record of the trust deed, precluded any later adverse claim of the operating company. Nothing that either the settler, the operating company or the construction company might do in their dealings with each other might or could alter the mortgagees' then fixed rights.

In many western states mutual cooperative irrigation companies unconnected with the Carey Act have given mortgages upon their irrigation systems. The stock of these companies is usually subject to assessment or tolls for operation and maintenance. It would be a novel principle if these mortgaging corporations could, through the simple process of sales upon their own delinquent stock assessments, divest a mortgagee of a prior mortgage lien on the irrigation works on the theory that either the express or the implied right of assessment on the stock of such company arising out of the desirability or the necessity of operating this class of property was a right superior to the mortgage lien on the system. The mortgagee may know that the stock is subject to assessment and that any stockholders' right may be divested by appropriate proceedings. But that would not and should not affect the underlying mortgage.

THE EQUITIES IN GENERAL

The trial court, in following the contentions of petitioner and failing to give effect to the numerous state statutes which respondents invoked for the protection of their rights, was evidently strongly moved by its conception of the equities of the conflicting claims.

The opinion (like petitioner's brief in this Court) dwells on the characteristics and functions of the construction company as a "promoting company with hope not groundless of large profits" (R. 296) and (R. 298), "it is to be inferred that directly or indirectly the construction company is under the control of the plaintiffs as trustees, and such moves as it makes are actuated under their direction."

We earnestly submit that the scattered bondholders of the eastern and middle western states whom the respondent trustees represent, have in no sense a speculative or "promotion" claim. The dollars they are seeking to realize out of this foreclosure of mortgage and pledged property are honest investment dollars, the full value of which went into the creation of the irrigation works which the settlers are enjoying. They had no hope of profit except the 6 per cent interest which the bonds bear, and which interest they have not received for many years. The mortgage invoked for the security of their rights was put upon the irrigation works before they were built; their money created the property in controversy. It has always been supposed that the state and federal statutes which, in accordance with public policy, encouraged the reclamation of arid lands of the west, gave them a prior lien on the property created for the return of their money with the moderate interest thereon. Their position in seeking the return of this money as a prior lien does not seem "harsh and inequitable." On the other hand, it seems to us harsh and inequitable that after creating the irrigation works, they should be assessed out of their compensation therefor.

Under the terms of the State contract, the shares of the operating company held by the construction company were to be of "no force or effect" until sold to settlers. Every settler who filed upon the land knew, therefore, or was charged with notice, that the unsold shares of stock and that interest in the irrigation works represented by unsold stock was not subject to assessment for the operation and maintenance of the system. The construction company and its successors received no benefits of the

distribution of water and should not share the burden of the distribution of water. It does not seem to us harsh or inequitable, but rather in harmony with the well understood general intent of the enterprise, that after sales to settlers were attempted to be made, to-wit: after contracts of sale were entered into which were not lived up to by the settlers, and which resulted in the repossession of the property by the assignee of the seller, that such property and the shares of stock represented by it should still be in the same status as before sale—that is, neither receiving any benefits from the delivery of water nor subject to assessments for the delivery of water.

The construction company, under its contract with the State, was compelled to sell to any qualified entryman of land (R. 257). It could not pick its financial risks. Less than 10 per cent of the purchase price of the water shares were payable in cash, the balance on long deferred payments. The settlement of the project was fostered by these liberal terms of contracts of sale. The natural result was the more rapid settlement of the project and the bringing in of other settlers to share in the maintenance of the irrigation works and charges for distribution of the water. But there were bound to be defaults and foreclosures. Under these circumstances, it seems to us harsh and inequitable, where the sale was unsuccessful and never consummated, that the shares once contracted to be sold, whether water was ever delivered under them or not, and after repossession by the seller and awaiting another sale, should perpetually be subject to maintenance assessments. The respondents freely concede that to the extent that the *purchaser* has any equity by reason of

payments made, such equity would be subject to the operating company's lien for maintenance.

Consider for a moment the effect of petitioner's contention. Irrigation works under the Carey Act are always built upon plans and specifications carefully gone over, scrutinized and agreed upon between the construction company and the State. Irrigation systems are not always ideal structures. There is a wide variance in their character. The price fixed for the sale of water rights depends upon the plans and specifications, which determine the expense of the construction of the system. An ideal ditch would be one lined with cement, having concrete headgates and weirs. Generally no such system is specified in State Carey Act contracts. Earth ditches with wooden headgates and structures are more often first built, generally sufficient for a time, and more in keeping with the settlers' ability to pay the price. There must be an initial relation between the cost of reclamation and the value at the time of the land reclaimed. In the same way dirt roads precede asphalt pavements. The latter follow the former with the increase in value of the adjacent property.

But if the settlers are at liberty to assess the stock for improvements and betterments and make such assessments a prior lien to that of the original purchase price of the water shares, then the plans and specifications in the State contract mean nothing. The settlers can force the construction company or its assigns to build any sort of improvements or betterments they desire. They need only levy assessments on the unpaid stock for betterments and improvements. Ditches can be concrete lined, steel flumes put in and concrete headgates installed; if the lien

of assessments becomes prior to the statutory lien of the construction company and the mortgagees, the latter must pay the delinquent assessments or forfeit the stock, and this process may be repeated indefinitely. In each case the money would go into the treasury of the settlers' company for the building of an irrigation system entirely different from that originally specified in the State contract.

Even in case the respondents had paid these assessments, they would have no way to be reimbursed upon foreclosure of the individual water contract liens they held. Section 3023, Idaho Compiled Statutes, provides that upon sale of the property to satisfy the purchase price lien:

> "No person * * * or company owning and holding any lien shall bid in or purchase any land or water right at a greater price than the amount due on said deferred payment for said water right and land, and the costs incurred in making the sale of said land and water right."

The succeeding sections of the statutes (Secs. 3025-3028) provide that any qualified Carey Act entryman, a stranger to the transaction, may redeem from the foreclosure sale for the amount bid, thus obtaining the benefits of the payments the prior purchaser had made. Whenever the respondents are obliged to foreclose a water contract lien against a settler and through foreclosure again obtain possession and ownership of the stock, it is to all intents and purposes unissued stock of the corporation until resold again to a purchaser or a landowner. Then it again becomes subject to assessment and such new purchaser's interest may in turn be divested

by appropriate and valid proceedings of the operating company in connection with its assessments, tolls or charges for water service. But these proceedings should not be held to affect respondents' prior lien until it has finally obtained through *consummated* sale the purchase price for such shares. As stated in repeated decisions of the Supreme Court of Idaho, the construction company or any assignee of its rights, are simply trustees for future settlers. (State vs. Twin Falls, Salmon River Company, 30 Idaho 41, at page 59). With regard to water stock that has once been sold and is now repossessed, the construction company and the respondents, as assignees, still occupy that trustee capacity. Only qualified entrymen can enter Carey Act land. The irrigation company and the trustees are powerless to file upon and farm the land and utilize the water. The land and water stock must be held until some other settler buys it.

Consider those shares of stock held by respondents which are appurtenant to unpatented Carey Act lands which have been cancelled by the State upon the application of the operating company (R. 164, 165). There the operating company took the initiative in causing to be cancelled the entries of a large number of settlers for their failure to comply with the rules and regulations of the State Board Commissioners with respect to cultivation and residence; its own activity resulted in the cancellation of these entries. As a practical matter, the cancellation of these Carey Act land entries has resulted in eliminating the delinquent entrymen and cancelling the sale of the stock. Surely this stock, while awaiting resale, should be considered as simply unsold stock. There is no land upon which it can be used for irrigation. While

the water stock on its face makes the water right appurtenant to such land, it is not so in fact. The land is unentered Carey Act land belonging to the State of Idaho. If this stock, put in such a position through the activity of the operating company, is in fact subject to perpetual assessment while awaiting resale, it puts what seems to be a heavy, unexpected and inequitable burden upon the bondholders. The operating company renders no service with respect to the distribution or use of the water represented by this stock, and it should not, in any equitable view, be subject to service charges.

SHOULD THE OPERATING COMPANY BE DECREED AN EQUITABLE LIEN FOR THE AMOUNT OF ITS ASSESSMENTS, IRRESPECTIVE OF THEIR VALIDITY?

The trial court in its opinion strongly intimates (R. 312) that for the amount of its assessments, whether valid or not, the operating company has an equitable lien of which it cannot be deprived for the reason that it has preserved the property in which respondents have a large beneficial interest.

It is, of course, a somewhat startling doctrine that the owner of mortgaged property of which he is in possession and enjoying the benefits has a paramount equitable lien over the mortgagee for sums expended in the upkeep and repair of the property. In fairness, however, it must be recalled that this property is of a special nature. So let us examine this conclusion in the light of the evidence.

The principal expense in the operation of irrigation works is *the cost of the water service*. It is primarily the expense of distribution of water among the consumers.

The salaries of watermasters, ditch riders, and the like, come clearly within this category. It was stipulated and admitted in the record as follows:

> "MR. SNOW: I think it may be admitted that the assessments as levied were not excessive, but reasonably necessary in the operation and maintenance and improvement of the canal system. • • • Further that the money so raised was used for the reasonable and necessary expenses of the company in the operation and management of the irrigation ditch."
>
> (R. 99.)

J. W. Christensen, the Secretary of the operating company, testified (R. 108) that they paid a watermaster $125.00 a month for the irrigation season; four ditch riders were paid $100.00 per month; the salary of the secretary of the company was $40.00 per month the year around; the manager received $2,000.00 a year (R. 110); about $20,000.00 was expended in the actual improvement of the system on sections where the upper ditch bank "had previously not been cemented." (R. 109.)

These items, constituting the bulk of the expense, could surely not be regarded as money spent for the preservation of the respondents' security; they were *operating expenses;* they constituted the expense of the delivery of water among the consumers. The shares of stock sold for delinquent assessments, after such sale, received no water service. The Secretary of the operating company testified (R. 108):

> "As a general thing the corporation has delivered no water to the owners of the shares of stock after the sale to my company for delinquent assessments."

If the operating company, on equitable principles, is entitled to an equitable lien for the preservation of the security of respondents, surely the amount of money spent in the preservation of the property should be segregated. The burden was on the operating company to set up in its answer the sum so expended and to segregate such sums from the moneys spent for service to consumers in the distribution of water and sums expended for desirable improvements. The operating company neither pleaded nor proved an equitable lien. On the other hand, it pleaded and sought to prove *statutory assessments* under the general corporation law; but these are void because excessive, and even if valid, subordinate under the law to plaintiff's lien.

There seems to run through the trial court's opinion and the arguments of petitioner before the various tribunals wherein this cause has been heard the subtle innuendo that the construction company or "promoting" company, as it is so studiously called, has in some manner failed in its obligations. Whatever may have been the defaults of other Carey Act construction companies, the record in this case shows that the Portneuf-Marsh Valley Irrigation Company has fulfilled all its obligations. In the settlement agreement between the construction company and the operating company made at the time the project was completed, it is recited (R. 152):

> "Said operating company is now willing to accept and receive the said system in its entirety as fully completed in accordance with the terms of the (State) contract aforesaid . . . and to recognize that the obligations of said construction company under the terms of said contract aforesaid are now fully fulfilled and at an end . . ."

The construction company on that occasion paid to the operating company the sum of $31,000.00 to be expended by the operating company in betterments and repairs, and completion of the irrigation system, and for that sum and the other considerations in the agreement recited, it was therein provided:

> "The operating company expressly undertakes and agrees to hold the construction company harmless from any claim or demand growing out of the construction *or operation* of said irrigation system."
>
> (R. 155.)

This was repeated in the deed and agreement of conveyance whereby the irrigation works were conveyed to the operating company (R. 176).

It would seem, under these circumstances and in view of the existing agreements between the construction company and the operating company, eminently unfair to decree to the operating company an equitable lien on the property of the construction company or its assigns for a duty which the operating company, for a valuable consideration, took upon itself. An equitable lien upon the interest in the irrigation works owned by the construction company or its assigns growing out of the operation of the system would seem to be precluded under the particular facts of this case, even if the general principle were for a moment admissible.

THE SITUATION OF THE SETTLERS

The situation of the settlers presented by the record is by no means a harrowing one. During the eight years from 1915 to 1922, inclusive, as shown by the evidence

in this case, a total of $13.75 per acre has been levied as the total assessments. That sum is the aggregate of the several assessments shown, or attempted to be shown, to be levied. The water has been distributed, the system maintained, and according to the testimony, even improved, through collections from those settlers who have paid an of average of $1.71 per acre or per share each year. This is no excessive burden. The general knowledge and experience of certain members of the Court will show that it is not above the usual annual maintenance charges on large and successful irrigation projects of which they undoubtedly have knowledge. The equities are with respondents. The Court will apply the applicable statutes, contracts and by-laws according to their apparent meaning and intent. If the judgment of the Court of Appeals should be reversed and the claimed prior lien of the operating company upheld, it would result in the payment of nearly $90,000.00 to the settlers out of the first proceeds of the foreclosure sale. That sum invested at 6 per cent interest would produce a revenue of over $5,000.00 per year. In the future for ten years at least, the settlers would then have no maintenance assessments at all to pay for the distribution of their water, because the annual interest on the sum realized from the foreclosure sale in these proceedings, together with the gradual disbursement of that fund, would suffice for that period to operate the system.

The prior lien of nearly $90,000.00 claimed by petitioner amounts to over 40 per cent of the original debt of the bond issue. The sum due to respondent trustees at the time of the decree herein was upwards of $350,000.00. The aggregate liens on the property claimed by petitioner

and respondents amount accordingly to approximately $440,000.00, exclusive of interest accrued since the decree. There remain in Idaho considerable bodies of arid land which have not been reclaimed under the Carey Act. If it is held that the prior lien which it has always been supposed the statute imposed for repayment of the cost of construction of the irrigation works can be impaired through the creation of prior liens directly arising as in this case out of the settlers' failure to fulfill their obligations, there must of necessity be an end to Carey Act construction.

The funds invested by the bondholders whom the respondent trustees represent bear a striking analogy to the funds invested by the Government of the United States under the Federal Reclamation Act. The United States Reclamation Service is spending millions of dollars in the western states in the reclamation of arid public lands. The Reclamation Act provides that the settler shall repay to the Federal Government the actual pro rata cost of the irrigation works (32 Stat. 389). The installments of settlers' payments are stretched out over a long period of years. Even though the land may be patented to the settler, the government reserves "a lien prior to all others" for the future installments to fall due on the water right.

Irwin vs. Wright, 258 U. S. 219; 66 L. ed. 573.

Many of these federal projects are completed and have been turned over to irrigation districts, water users' associations or analagous organizations of settlers for operation and distribution of the water to the consumers. These irrigation projects, like Carey Act projects, require maintenance and operation after their completion. Con-

gress, in reserving its "lien prior to all others" for the cost of the construction of these projects clearly contemplated that during the long interval before the public moneys so expended are repaid the irrigation works would require such operation and maintenance and the distribution of water among the consumers.

How abhorrent it would be to the sense of justice of the average citizen if these various settlers' organizations could, under the specious guise of "preserving the property," levy assessments to cover the cost of distribution of the water among the consumers, the ordinary maintenance incidental to the use of the property, or the improvement of the property, and thus create liens on the irrigation works and water rights which would divest the Government of its right to be reimbursed for the cost of building the project. Should that possibility once be admitted, Congress would properly refuse to appropriate another dollar for reclamation purposes. The federal statute gives the government builder a prior lien in the case of government projects. The state statute in Idaho gives a prior lien to the builder of Carey Act projects. Neither lien is harsh or inequitable but reasonable and consonant with the highest justice. The Circuit Court of Appeals, in reversing the Trial Court in this case, said:

> "We are of the opinion that, upon the case made by the record, the bondholders are legally and equitably entitled to a prior lien for the amount due thereon on the entire irrigation system in question and its waters, and upon the interest in the said system and waters represented by the stock acquired by and held in the treasury of the canal company."

We respectfully submit that the decision of the Circuit Court of Appeals is correct and should be affirmed.

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APPENDIX

ORIGINAL "CAREY ACT" OF CONGRESS, BEING SECTION 4 OF THE ACT OF AUGUST 18, 1894 (28 STATUTES, 372-422):

SEC. 4. That to aid the public land states in the reclamation of the desert lands therein, and the settlement, cultivation, and sale thereof in small tracts to actual settlers, the Secretary of the Interior, with the approval of the President, be, and hereby is, authorized and empowered, upon proper application of the state, to contract and agree, from time to time, with each of the states in which there may be situated desert lands as defined by the act entitled, "An Act to provide for the sale of desert land in certain States and Territories, approved March third, eighteen hundred and seventy-seven, and the act amendatory thereof, approved March third, eighteen hundred and ninety-one, binding the United States to donate, grant and patent to the state, free of cost for survey or price of such desert lands, not exceeding one million acres in each state, as the state may cause to be irrigated, reclaimed, occupied, and not less than twenty acres of each one hundred and sixty-acre tract cultivated by actual settlers, within ten years next after the passage of this act, as thoroughly as is required of citizens who may enter under the said desert land law."

Before the application of any state is allowed or any contract or agreement is executed or any segregation of any of the land from the public domain is ordered by the Secretary of the Interior, the state shall file a map of the said land proposed to be irrigated, which shall exhibit a plan showing the mode of the contemplated irrigation,

and which plan shall be sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops, and shall also show the source of the water to be used for irrigation and reclamation, and the Secretary of the Interior may make necessary regulations for the reservation of the lands applied for by the states, to date from the date of the filing of the map and plan of irrigation, but such reservation shall be of no force whatever if such map and plan of irrigation shall not be approved. That any state contracting under this section is hereby authorized to make all necessary contracts to cause the said lands to be reclaimed, and to induce their settlement and cultivation in accordance with and subject to the provisions of this section; but the state shall not be authorized to lease any of said lands or to use or dispose of the same in any way whatever, except to secure their reclamation, cultivation and settlement.

As fast as any state may furnish satisfactory proof, according to such rules and regulations as may be prescribed by the Secretary of the Interior, that any of said lands are irrigated, reclaimed, and occupied by actual settlers, patents shall be issued to the state or its assigns for said lands so reclaimed and settled: *Provided*, That said states shall not sell or dispose of more than one hundred and sixty acres of said lands to any one person, and any surplus of money derived by any state from the sale of said lands in excess of the cost of their reclamation shall be held as a trust fund for and be applied to the reclamation of other desert lands in such state. That to enable the Secretary of the Interior to examine any of the lands that may be selected under the provisions of this section, there is hereby appropriated out of any moneys in the Treasury not otherwise appropriated one thousand dollars.

FEDERAL AMENDMENT TO "CAREY ACT" AUTHORIZING LIEN FOR EXPENSES OF RECLAMATION OF CAREY ACT LAND, BEING ACT APPROVED JUNE 11, 1896 (29 Stat., 413-434).

That under any law heretofore or hereafter enacted by any state providing for the reclamation of arid lands in pursuance and acceptance of the terms of the grant made in section four of an act entitled, "An Act making appropriations for the sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five," approved August eighteenth, eighteen hundred and ninety-four, a lien or liens is hereby authorized to be created by the state to which such lands are granted, and by no other authority whatever, and when created shall be valid on and against the separate legal subdivisions of land reclaimed, for the actual cost and necessary expenses of reclamation and reasonable interest thereon from the date of reclamation until disposed of to actual settlers; and when an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim a particular tract or tracts of such land, then patents shall issue for the same to such state without regard to settlement or cultivation: *Provided*, That in no event, in no contingency, and under no circumstances shall the United States be in any manner directly or indirectly liable for any amount of any such lien or liability, in whole or in part.

PERTINENT STATE LAWS RELATING TO CAREY ACT PROCEDURE IDAHO COMPILED STATUTES, 1919

SEC. 2996. *Acceptance of the Carey Act.* The State of Idaho accepts the conditions of Section 4 of an act of congress, entitled, "An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1894, and for other purposes," approved August 18, A. D. 1894, and the acts amendatory thereof, together with all the grants of land to the state under the provisions of the aforesaid act and its amendments.

The selection, management and disposal of said land shall be vested in the Department of Reclamation.

SEC. 3009. *Application to Enter Land.* Any citizen of the United States or any person having declared his intention to become a citizen of the United States (excepting married women) over the age of 21 years, may make application, under oath, to the department of reclamation, to enter any of said land in an amount not to exceed 160 acres for any one person; and such application shall set forth that the person desiring to make such entry does so for the purpose of actual reclamation, cultivation and settlement in accordance with the act of congress and the laws of this state relating thereto, and that the applicant has never received the benefit of the provisions of this chapter to an amount greater than 160 acres, including the number of acres specified in the application under consideration. Such application must be accompanied by a certified copy of a contract for a perpetual water right, made and entered into by the party making application with the person, company or association who has

been authorized by the department to furnish water for the reclamation of said lands; and, if said applicant has at any previous time entered lands under the provisions of this chapter he shall so state in his application, together with description, date of entry and location of said land. The department shall thereupon file in its office the application and papers relating thereto, and, if allowed, issue a certificate of location to the applicant. All applications for entry shall be accompanied by a payment of 25 cents per acre, which shall be paid as a partial payment on the land if the application is allowed; and all certificates when issued shall be recorded in a book to be kept for that purpose. If the application is not allowed, the 25 cents per acre accompanying it shall be refunded to the applicant. The department shall dispose of all lands accepted by the state under the provisions of this chapter at a uniform price of 50 cents per acre, half to be paid at the time of entry and the remainder at the time of making final proof by the settler.

SEC. 3014. *Proof of Reclamation and Settlement: Patent.* Within one year after any person, company, or persons, association or incorporated company authorized to construct irrigation works under the provisions of this chapter shall have notified the settlers under such works that they are prepared to furnish water for the full irrigation season under the terms of their contract with the state, which notice, however, must first have been served upon the department of reclamation, which must cause an investigation of said works to be made, which shall include a report thereon by an engineer of the department, the said settler shall cultivate and reclaim not less than one-sixteenth part of the land filed upon, and within two

years after the said notice, the settler shall have actually irrigated and cultivated not less than one-eighth of the land filed upon, and within three years from the date of said notice, the settler shall appear before the department of reclamation, a judge or clerk of any Court of record within the state, or commissioners to be designated by the department within the state and make final proof of reclamation, settlement and occupation, which proof shall embrace evidence that he is the owner of shares in the works which entitle him to a water right for his entire tract of land sufficient in volume for the complete irrigation and reclamation thereof; that he has been an actual settler thereon and has cultivated and irrigated not less than one-eighth part of said tract; and such further proof, if any, as may be required by the regulations of the Department of the Interior and the Department of Reclamation of the State of Idaho.

The officer taking this proof shall be entitled to receive a fee of $2, which fee shall be paid by the settler and shall be in addition to the price paid to the state for the land: *Provided*, That when the department of reclamation takes final proof, all fees received by it shall be turned into the state treasury. The commissioners appointed by the department are hereby authorized to administer oaths.

All proof so received shall be submitted to the department of reclamation, and shall be accompanied by the final payment for said land, and, upon approval of the same by the department, the settler shall be entitled to his patent. If the land shall not be embraced in any patent theretofore issued to the state by the United States, the proofs shall be forwarded to the Secretary of the

Interior, with the request that a patent to said lands be issued to the state.

When the works designed for the irrigation of lands under the provisions of this chapter shall be so far completed as to actually furnish an ample supply of water in a substantial ditch or canal to reclaim any particular tract or tracts of such lands, the state of Idaho shall, through the Department of Reclamation, make proof of such fact and shall apply for a patent to such lands in the manner provided in the regulations of the Department of the Interior.

SEC. 3018. *Appurtenancy of Water Rights.* The water rights to all lands acquired under the provisions of this chapter shall attach to and become appurtenant to the land as soon as title passes from the United States to the State.

SEC. 3019. *Lien for Purchase Price of Water Right.* Any person, company or association, furnishing water for any tract of land, shall have a first and prior lien on said water right and land upon which said water is used, for all deferred payments for said water right; said lien to be in all respects prior to any and all other liens created or attempted to be created by the owner and possessor of said land; said lien to remain in full force and effect until the lxst deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which said water right was acquired.

SEC. 3020. *Record of Water Contract.* The contract for the water right upon which the aforesaid lien is founded shall be recorded in the office of the recorder of the county where said land is situate.

SEC. 3021. *Foreclosure of Lien.* Upon default of any of the deferred payments secured by any lien under the provisions of this chapter, the person, company or persons, association or incorporated company, holding or owning said lien, may foreclose the same according to the terms and conditions of the contract granting and selling to the settler the water right.

SEC. 3022. *Foreclosure Sale.* All sales shall be advertised in a newspaper of general circulation, published in the county where said land and water right is situate, for six consecutive weeks, and shall be sold to the highest bidder at the front door of the courthouse of the county, or such place as may be agreed upon by the terms of the aforesaid contract. And the sheriff of said county shall in all suchcases give all notices of sale, and shall sell all such landsand water rights, and shall make and execute a certificate of sale to the purchaser thereof.

SEC. 3023. *Same: Limitation on Bid of Lienholder.* At such sale no person, company of persons, association or incorporated company, owning and holding any lien, shall bid in or purchase any land or water right at a greater price than the amount due on said deferred payment for said water right and land, and the costs incurred in making the sale of said land and water right.

SEC. 3024. *Record of Certificate of Sale.* Upon issuing any certificate of sale it shall be the duty of the sheriff to file for record in the office of the recorder of the county where such land is situated, a certified copy of such certificate of sale.

SEC. 3025. *Disposition of Proceeds of Sale.* Where such land and water rights are not purchased by the lien holder at such foreclosure sale, it shall be the duty of the sheriff

to first pay the lienholder out of the proceeds of such sale, the amount of the lien, together with all interest, costs and fixed charges thereon, and to pay any balance remaining to the person against whom such lien has been foreclosed, and for his services in such cases the sheriff shall receive the same fees as are provided by the law in civil cases.

SEC. 3026. *Redemption by Owner.* At any time within nine months after the foreclosure sale by the sheriff of the land and water rights aforesaid, the original owner against whom the lien has been foreclosed, may apply to the person, company of persons, association or incorporated company purchasing at such sale, to redeem such land and water rights, and the purchaser shall assign the certificate of sale of such land and water rights to such original owner, upon the payment by him within such nine months of the amount of the lien for which the same was sold at such foreclosure sale, together with the interest, costs and fixed charges thereon. In case the original owner shall redeem the land and water rights sold as aforesaid, he shall file for record in the office of the recorder the certificate of sale assigned to him by the purchaser as aforesaid, upon his redemption of such land and water rights.

SEC. 3027. *Redemption Purchase by Prospective Settler.* Where the lienholder becomes the purchaser at such foreclosure sale, if such land and water rights are not redeemed by the original owner within nine months, then at any time within three months after the expiration of such nine months, any person desiring to settle upon and use such land and water rights may apply to the purchaser at such foreclosure sale to redeem such land and water rights, and such purchaser shall assign the certificate of sale of

such land and water rights to the person desiring to redeem the same, upon the payment by him, within such three months, of the amount of the lien for which the same was sold at such foreclosure sale, together with the interest, costs and fixed charges thereon. In case the land and water rights shall be redeemed by any person other than the original owner, the sheriff shall, upon presentation of such certificate, issue a deed for such land and water rights to the person so redeeming the same.

SEC. 3028. *Sheriff's Deed to Purchaser on Foreclosure.* If the land and water rights shall not be redeemed by any person within the times and in the manner hereinbefore provided, it shall be the duty of the sheriff, upon presentation of the certificate of sale by the original purchaser, to issue a deed to such purchaser.

PERTINENT SECTIONS OF IDAHO COMPILED STATUTES RELATING TO ASSESSMENTS ON STOCK OF CORPORATIONS.

SEC. 4733. *Directors May Levy Assessments.* The directors of any corporation formed or existing under the laws of this state, after one-fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form, and to the extent, herein provided.

SEC. 4734. *Limitation on Assessments.* No one assessment must exceed 10 per cent of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided, as follows:

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount.

2. The directors of railroad corporations may assess the capital stock in installments of not more than 10 per centum per month, unless in the articles of incorporation it is otherwise provided.

3. The directors of fire insurance corporations may assess such a percentage of the capital stock as they deem proper.

The procedure relating to levying and collecting of assessments is set forth in Sections 4735 to 4751, Idaho Compiled Statutes.

SUPREME COURT OF THE UNITED STATES.

No. 252.—October Term, 1926.

Portneuf-Marsh Valley Canal Company, Petitioner, vs. Howard W Brown and John R. Chapin, as Trustees.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[May 31, 1927.]

Mr. Justice Stone delivered the opinion of the Court.

The question presented by this record is one of priority of liens upon shares of stock representing water rights in an irrigation project organized and created under the Act of Congress known as the Carey Act, August 18, 1894, c. 301, § 4, 28 Stat. 372, 422, as amended June 11, 1896, c. 420, 29 Stat. 413, 434, and under concurrent legislation of the State of Idaho, title 26, c. 136, § 2996, *et seq.* The present suit was begun in the district court for Idaho by respondents, citizens of Massachusetts, for the foreclosure of a deed of trust, of which they are trustees. The defendants are two Idaho corporations, the Portneuf-Marsh Valley Irrigation Company and the Portneuf-Marsh Valley Canal Company, the petitioner here, referred to respectively in this opinion as the construction company and the operating company. The district court entered a decree for the defendants on the issues now presented, 299 Fed. 338, which was reversed by the court of appeals for the ninth circuit. 5 Fed. (2d) 95. This Court granted certiorari. 270 U. S. 637.

Proceeding under the applicable legislation, the construction company entered into a contract on June 3, 1908 with the State of Idaho for the construction of an irrigation system to supply water to certain arid lands within the state, set apart for that purpose by the federal government under the provisions of the Carey Act. The contract provided that the construction company should sell water rights in the irrigation system to such settlers as

should receive from the state allotments of the designated lands and fixed maximum rates and terms of sale. A water right was defined as the right to receive sufficient water from the system to irrigate one acre of land, and represented a proportionate interest in the irrigation works. The contract contemplated vesting the control of the irrigation system in the settlers through the medium of an operating company, to be organized by the construction company as soon as the lands were thrown open to settlement. It provided that the operating company should issue one share of stock for each water right sold to settlers and that the remainder should be issued to the construction company pending further sale of water rights, and that the irrigation system when completed should be transferred to the operating company in return for its capital stock so issued. The contract stipulated also that the interest of the construction company in the irrigation system and the lands within the project might be mortgaged in accordance with the Carey Act and the statutes of Idaho, and these laws were specifically made a part of the contract.

Pursuant to the statutes and the contract with the state, the construction company sold water rights to settlers, undertaking to deliver to them a like number of shares of stock in the operating company. The purchasers agreed that their interest in the lands to be acquired from the state, to which the water rights were to be appurtenant, and the shares of stock should be security for the deferred installment payments, and default in payment of any installment was to accelerate the maturity of the purchase price. Appropriate mortgages and assignments to be first liens upon the land were to be given for that purpose. The agreement also provided that the operating company should have power to levy all necessary tolls, charges, and assessments which the purchasers of the water rights, represented by the stock, agreed to pay, and that the contracts for the sale of water rights might be assigned by the construction company.

To finance the project, the construction company authorized a bond issue secured by the present mortgage of the irrigation system then being constructed. The deed provided that until default the construction company might sell water rights to entrymen and required that before bonds were issued, the construction company deposit with the trustees as further security the contracts

for the sale of water rights, as described, and other security obtained from the purchasers.

In compliance with the statutes and contracts, steps necessary to launch the system were taken. Water rights were sold, the designated lands were allotted to entrymen, their contracts of purchase were pledged by the construction company under its mortgage and the irrigation system was conveyed to the operating company, subject to the mortgage.

The project did not flourish. Some of the settlers having failed to make payment of installments due on the contracts of purchase, respondents acquired their land, water rights, and stock, in some cases by foreclosure and in others by quit claim deeds. The construction company defaulted in payment of interest on its bonds. The present suit was brought by respondents to foreclose the mortgage on the irrigation system and to foreclose any claims that the two companies might make to the land, water rights, and stock acquired by respondents in the enforcement of their rights against the entrymen under the contracts of purchase. The construction company, being insolvent, made no defense and the case was disposed of below on the theory that the trustees, as against the operating company, so far as the water rights and stock were concerned, stood in the position of the construction company. The operating company as a defense set up by answer its ownership of some of the stock in controversy acquired under a lien alleged to be superior to that of respondents. This contention was based upon the following facts.

The certificate of incorporation of the operating company authorizes it to levy and collect tolls, charges, and assessments to defray the expense of maintenance and operation of the irrigation system, and its by-laws, concededly in accordance with the contracts and applicable statutes, require the certificates of stock to describe the lands to which the shares and water rights relate, and declare that they shall be appurtenant to such lands, unless forfeited for nonpayment of assessments. In the event of default in payment of assessments by stockholders, the operating company under local statutes may sell the stock at public auction. In the case of the stock in question the assessments had not been paid by the entrymen. The stock was sold at public auction, the operating company becoming the purchaser.

By stipulation the decree of foreclosure was limited to the stock in the operating company, acquired by it in the manner already described, and as to that stock the decree gave priority to the maintenance liens.

It will be observed that out of the complicated transactions by which the irrigation system was created and made appurtenant to lands set apart by the government for that purpose, two distinct classes of liens were created with respect to the stock and water rights, in addition to the general mortgage lien on the irrigation system as a whole. There were (a) the liens for maintenance and operating charges in favor of the operating company, created under its charter and by-laws by the acquisition and acceptance of its stock by the several purchasers and their failure to pay assessments; (b) the purchase money liens in favor of the construction company on the stock and water rights and on the entrymen's land, created by the sales contracts which had been pledged to respondents.

The charter and by-laws of the operating company provided that the construction company should not be liable for assessments for the expense of maintenance and operation while it held the stock before sale. As no charges could be levied upon the purchasers of the water rights to whom the construction company delivered the equivalent shares of stocks until they received allotments of land, and as the acquisition of the water rights and stock in the operating company by purchasers was conditioned upon their receiving allotments of land, it is apparent that the provisions for maintenance liens in favor of the operating company and the lien stipulations in the sales contracts became effective simultaneously on the allotment of lands to purchasers of water rights. But as the liens for maintenance came into existence only with the furnishing of water to allottees after they had acquired their land, those liens were subsequent in point of time to the purchase money liens which attached as soon as the lands were acquired.

Usually liens which are prior in time are prior in equity, but where as here each is stipulated for in contemplation of the creation of the other, the question of priority must be resolved by ascertaining the true meaning and effect of the stipulations themselves. And as the documents here contain no specific provision giving preference to the one class of liens or the other, the question of priority

now presented must be resolved by an examination of the entire plan for establishing the irrigation system, in the light of the applicable statutes.

Legislation permitting, a scheme for the creation of such a system might undoubtedly provide that liens for maintenance should take precedence over a general mortgage given to finance its construction. Such is the recognized order of priority in admiralty and to a more limited extent in receiverships in equity and in foreclosure proceedings. The trial court stated persuasively the contentions made here that hardship to individuals and danger to the unity and continuity of the system in event of foreclosure, if maintenance charges are not thus given the preference, are considerations which might well turn the scales in favor of that class of liens if the statutes, or the controlling documents in the absence of statutory provision, were silent or ambiguous.

But we think the statutes here are neither silent nor ambiguous. Reading together the documents embodying the plan of organization, which specifically incorporated the provisions of the statutes, the question may be resolved without exclusive reliance upon implications to be found in the general nature and purpose of the plan itself.

The Carey Act as amended declares, "a lien or liens is hereby authorized to be created by the State to which such lands are granted and by no other authority whatever, and when created shall be valid on and against the separate legal subdivisions of land reclaimed, for the actual cost and necessary expenses of reclamation and reasonable interest thereon. . . ." This statute is an enabling act, empowering the state to provide for liens by appropriate legislation. The construction of state statutes so enacted, and the status of liens created under them are local questions (*Equitable Trust Co.* v. *Cassia County*, 15 Fed. (2d) 955) which, in the absence of controlling authority by the highest court of the state, we must determine for ourselves. *Risty* v. *Chicago, R. I. & Pac. Ry.*, 270 U. S. 378. By the act of the Idaho legislature accepting the benefits of the Carey Act (§ 3019 Comp. Stat. 1919), it is provided:

"Any person, company or association, furnishing water for any tract of land, shall have a first and prior lien on said water right and land upon which said water is used, for all deferred payments for said water rights; said lien to be in all respects prior to any

and all other liens created or attempted to be created by the owner and possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which said water right was acquired."

The construction company was a company furnishing water within the meaning of the section, and the liens for the deferred payments now asserted by respondents are liens in its favor, authorized by the statute and reserved by its contracts with the purchasers. But it is argued, notwithstanding the broad language of the statute, that its application is limited by the second clause: "said lien to be in all respects prior to any and all other liens created or attempted to be created by the owner and possessor of said land." It is insisted, as the district court held, that by reason of this clause the liens to secure deferred payments do not take priority over the liens for maintenance because the latter are not liens created by the land owners, which alone are subordinated to the purchase contract liens.

But we think the quoted clause cannot be thus narrowly construed. It is not in terms a limitation on the general language of the section but an amplification of it. Its apparent purpose is to make certain that entrymen, in the process of acquiring their lands and making the water rights appurtenant to them, may not by any legal device create liens which shall come ahead of the purchase contract liens given to secure the deferred payments. The clause provides that the authorized liens on the water rights and lands shall have priority over all liens created by the land owners themselves, but that is not equivalent to saying that they shall be prior to no others. It is of course an implied term of every lien statute that the lien authorized is subordinate to liens for taxes. *Continental & Commercial Trust & Savings Bank* v. *Werner*, 36 Idaho 601, 602. If the meaning here contended for were given to the statute, liens for the unpaid purchase price would be subject to subsequent material men's and mechanics' liens and those of attachment and levy of execution. The statute obviously could not be so interpreted without thwarting its plain purpose and destroying its effective operation.

Its primary object was to secure the requisite capital for the creation of costly irrigation systems by which arid public lands could be brought under cultivation. It could not have been con-

templated that the "first and prior" liens authorized by the statute to secure the repayment of such capital should be subsequent to every other lien which might be placed upon the property except those formally executed by the land owners or that a "first lien" of that character would attract capital into a new and hazardous enterprise. The concluding clause of the section "said lien to remain in full force and effect until the last deferred payment . . . is fully paid and satisfied", can only mean that the liens for purchase money which were first when created, remain so despite maintenance liens which may later come into operation as a result of the non-payment of assessments.

The provisions of the various instruments for establishing the irrigation system, while not explicit, are entirely consistent with the view which we take of the meaning and effect of the statute. The contract between the two companies provided in substance, as did the by-laws of the operating company specifically (Art. V, § 8) that all shares of stock "shall be held subject to the rights of" the construction company "until the amount due such Company its successors or assigns, shall have been fully . . . paid, as provided in the contract between said corporation and the purchaser of shares. . . ."

It is significant also that c. 138 of the Compiled Statutes of Idaho, which provides for the regulation of Carey Act operating companies, contains specific provisions for establishing maintenance liens on Carey Act lands to which the water rights are appurtenant, by filing a notice of lien with the county recorder, §§ 3040, 3042, a procedure which does not seem to have been followed here. There are provisions for foreclosure and sale of the land with appurtenant water rights, §§ 3045, 3046. Section 3040 describes the maintenance lien as a "first and prior lien", but it is expressly provided, § 3049, that this article shall not affect "any other lien or right of lien given by the laws of this state, or otherwise," thus in terms giving the lien authorized by § 3019 priority. Section 5631 is not applicable since it does not pertain to water rights or stock.

We therefore conclude that the contract liens are superior to the maintenance liens asserted by petitioner, a conclusion which makes it unnecessary for us to consider the validity of the maintenance liens challenged by respondents.

Decree affirmed.